

Title 3

REVENUE AND FINANCE*

Chapters:

- 3.04 Capital Outlay Fund**
- 3.08 Departmental Trust Fund**
- 3.12 Gas Tax Street Improvement Fund**
- 3.14 Trunk Sewer Capital Reserve Fund**
- 3.16 Sewer Income Fund**
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* For Charter law provisions regarding the fiscal administration of the city, see Charter §§ 1100 – 1118.

Chapter 3.04**CAPITAL OUTLAY FUND***

Sections:

- 3.04.010 Established – Purpose.
3.04.020 Finance officer duty.

* For statutory authority for cities to establish capital outlay funds, see Gov. Code §§ 53730 – 53737.

3.04.010 Established – Purpose.

Pursuant to Section 1113 of the Charter, there is established a “special capital outlay fund No. 1.” This fund is to be used generally for all purposes which the city council deems to be of sufficient city-wide importance and benefit, including a portion for park and recreation development. (Ord. 858 § 1, 1963).

3.04.020 Finance officer duty.

The finance officer shall transfer all moneys received by the city from the shopping center for the sale of Vista Square housing project land into this special capital outlay fund No. 1. (Ord. 858 § 2, 1963).

Chapter 3.08**DEPARTMENTAL TRUST FUND***

Sections:

- 3.08.010 Established – Purpose.

* For provision of Charter law for a trust fund to accumulate city collections, see Charter § 1114.

3.08.010 Established – Purpose.

There is established a “departmental trust fund” for the city, as is required by, and for the purposes specified in, Section 1114 of the Charter. (Prior code § 2.3).

Chapter 3.12**GAS TAX STREET IMPROVEMENT FUND***

Sections:

- 3.12.010 Created.
 3.12.020 Moneys payable into fund.
 3.12.030 Expenditures.

* For statutory provisions concerning the appointment of moneys to cities having a special gas tax street improvement fund, see Streets and Highways Code § 2113; for provisions regarding highway user's funds generally, see Streets and Highways Code § 2100, et seq.

3.12.010 Created.

To comply with the provisions of Article 5 of Chapter 1 of Division I of the Streets and Highways Code, with particular reference to the amendments made thereto by Chapter 642, statutes of 1935, there is hereby created in the treasury of the city a special fund to be known as the "special gas tax street improvement fund." (Prior code § 2.34).

3.12.020 Moneys payable into fund.

All moneys received by the city from the state under the provisions of the Streets and Highways Code for the acquisition of real property or interests therein for, or the construction, maintenance or improvement of, streets or highways other than state highways shall be paid into such fund. (Prior code § 2.35).

3.12.030 Expenditures.

All moneys in such fund shall be expended exclusively for the purposes authorized by, and subject to, all the provisions of Article 5, Chapter 1, Division I of the Streets and Highways Code. (Prior code § 2.36).

Chapter 3.14**TRUNK SEWER CAPITAL RESERVE FUND**

Sections:

- 3.14.010 Establishment of trunk sewer capital reserve fund – Uses.

3.14.010 Establishment of trunk sewer capital reserve fund – Uses.

A. There is established a fund designated as the "trunk sewer capital reserve fund."

B. All revenue derived from the sewer capacity charges (formerly "sewerage facility participation charges") pursuant to CVMC 13.14.090 shall be deposited into such trunk sewer capital reserve fund.

C. The trunk sewer capital reserve fund shall be used solely for the following purposes, unless the city council shall by four-fifths vote appropriate such funds for another purpose; provided, such other purpose shall be for the planning, design, or construction of sewage collection or treatment or water reclamation purposes or incidental thereto:

1. Paying all or any part of the cost and expense to enlarge sewer facilities of the city so as to enhance efficiency of utilization and/or adequacy of capacity in order to effectively serve the needs of the city;

2. Paying all or any part of the cost and expense to plan and/or evaluate any future proposals for area-wide sewage treatment and/or water reclamation systems or facilities. (Ord. 2466 § 2, 1991).

Chapter 3.16**SEWER INCOME FUND***

Sections:

3.16.010 Establishment of sewer income fund – Uses.

* For statutory provisions regarding municipal funds generally, see Gov. Code § 43400, et seq.; for provisions authorizing reimbursement of subdividers for sewer construction pursuant to written contract, see Bus. and Prof. Code §§ 11543, 11544.

CROSS REFERENCE: Sewer Service Revenue Fund, see Ch. 3.20 CVMC.

3.16.010 Establishment of sewer income fund – Uses.

All revenue derived from public sewer connection fees under CVMC 13.14.030 through 13.14.080 shall be deposited into the fund designated as the “sewer income fund” and which may be used only for the acquisition, construction, reconstruction, maintenance and operation of sanitation or sewerage facilities; except that such fund may be used in the discretion of the city council for, pursuant to a written contract, the reimbursement of subdividers as required by Sections 66486 and 66487 of the Government Code or, pursuant to a written contract, to reimburse any person who has constructed sewer facilities to the extent, as determined by the city council, that such sewer facilities have benefited other properties, or to reimburse the city for any expenses incurred in connection with the construction and installation of any sewer facility, including but not limited to the cost of engineering work and all costs in connection with the acquisition of rights-of-way. (Ord. 2466 § 3, 1991; prior code § 26.72).

Chapter 3.18**SEWERAGE FACILITIES REPLACEMENT FUND**

Sections:

3.18.010 Established – Disposition of revenue – Expenditures permitted.

3.18.010 Established – Disposition of revenue – Expenditures permitted.

A. There is established a fund to be designated as the “sewerage facilities replacement fund.”

B. The city council shall set by resolution or ordinance the amount to be deposited into the sewerage facilities replacement fund. Any monies deposited shall be derived from the revenue collected from the monthly sewer service charge set forth in CVMC 13.14.110. The amount to be deposited may be a lump sum or a portion of each user’s sewer service charge.

C. Nothing herein shall be construed as superseding or conflicting with the existing sewer fund, sewer service revenue fund, or the trunk sewer capital reserve fund.

D. The fund shall be used solely for the purpose of paying the cost of refurbishment and/or replacement, in connection with the capital improvement program and with council approval, of structurally deficient sewerage facilities, including related evaluation, engineering, and utility modification costs, unless the city council shall, by four-fifths vote, appropriate such funds for another purpose; provided, such purpose shall be for the construction, maintenance or operation of sewers or incidental thereto, including any charge for its collection. (Ord. 3015 § 1, 2005; Ord. 2212 § 1, 1987).

Chapter 3.20

SEWER SERVICE REVENUE FUND*

Sections:

3.20.010 Establishment of sewer service revenue fund – Uses.

3.20.020 –

3.20.050 *Repealed.*

* For statutory provisions regarding municipal funds generally, see Gov. Code § 43400, et seq.

CROSS REFERENCE: Sewer Income Fund, see Ch. 3.16 CVMC. Sewer system generally, see CVMC Title 13.

3.20.010 Establishment of sewer service revenue fund – Uses.

A. There is established a fund to be designated as the “sewer service revenue fund.”

B. Except for the amounts deposited in the sewerage facilities replacement fund pursuant to CVMC 3.18.010, all revenue derived from sewer service charges set forth in CVMC 13.14.110 shall be deposited into such sewer service revenue fund.

C. Nothing herein shall be construed as superseding or conflicting with the existing sewer income fund.

D. The fund shall be used solely for the following purposes, unless the city council shall by four-fifths vote appropriate such funds for another purpose; provided, such purpose shall be for the construction, maintenance or operation of sewers or incidental thereto, including any charge for its collection:

1. Paying the cost of maintenance and operation of the sewer system of the city;
2. Paying all or any part of the cost and expense of extending, constructing, reconstructing or improving the sewer system of the city or any part thereof;
3. Reimbursing persons who have constructed sewer facilities and who have entered into a reimbursement agreement with the city;
4. Paying for the San Diego metropolitan sewer annual capacity charge;
5. Paying for the San Diego metropolitan sewer annual maintenance and operation charge and periodic industrial waste program charges;
6. Any purpose authorized for sewer income fund utilization. (Ord. 2466 § 5, 1991; Ord. 1401 § 1, 1972; Ord. 807, 1962; prior code § 26.80).

3.20.020 Service charges designated – Payment required – Real property defined.

Repealed by Ord. 2466 § 4, 1991. (Ord. 1815 § 1, 1978; Ord. 1774 § 1, 1977; Ord. 1086 § 1, 1967; Ord. 818, 1962; Ord. 807, 1962; prior code § 26.81).

3.20.022 Reduced sewer service charges permitted when – Application – Contents – Refunds – Fees.

Repealed by Ord. 2466 § 4, 1991. (Ord. 2259 § 1, 1988).

3.20.030 Variances permitted when – Application – Contents – Fees.

Repealed by Ord. 2466 § 4, 1991. (Ord. 1961 § 1, 1982; Ord. 1808 § 1, 1978; Ord. 1774 § 1, 1977; Ord. 998 § 1, 1966; Ord. 807, 1962; prior code § 26.82).

3.20.032 Exemptions permitted when – Application – Contents – Fees.

Repealed by Ord. 2466 § 4, 1991. (Ord. 1774 § 2, 1977).

3.20.040 Payment of charges – Penalty for delinquency – Discontinuance of service when.

Repealed by Ord. 2466 § 4, 1991. (Ord. 2441 § 1, 1991; Ord. 807, 1962; prior code § 26.83).

3.20.050 Deposits required when – Amount.

Repealed by Ord. 2466 § 4, 1991. (Ord. 807, 1962; prior code § 26.84).

Chapter 3.21

STORM DRAIN REVENUE FUND

Sections:

3.21.010 Establishment of storm drain revenue fund – Uses.

3.21.010 Establishment of storm drain revenue fund – Uses.

A. There is established a fund to be designated as the “storm drain revenue fund”.

B. All revenues derived from the storm drain fee set forth in Chapter 14.16 CVMC shall be deposited into said fund.

C. The fund shall be used solely for the following purposes, unless the city council appropriates such funds for another purpose by a fourth-fifths vote: to pay for the services of cleaning storm drain inlets, underground drainage systems, lined and unlined storm drainage channels or ditches, and planning costs associated with compliance with the conditions imposed upon the city by the “early permit” issued to the city by the Regional Water Quality Control Board on July 16, 1990, and to establish a local-level National Pollutant Discharge Elimination System (NPDES), all in accordance with the Federal Clean Water Act. (Ord. 2463 § 1, 1991).

Chapter 3.22

RECREATION TRUST FUND

(Repealed by Ord. 2771 § 1, 1999)

Chapter 3.24**COUNTY TAX COLLECTION***

Sections:

- 3.24.010 Transfer of duties to county – Authority.
- 3.24.020 Payment of collected taxes to city.
- 3.24.030 Compensation to county for performance of services.
- 3.24.040 Preservation of other duties of clerk and finance officer.

* For statutory provisions authorizing cities to transfer tax assessment and collection duties to the county, see Gov. Code § 51500, et seq.

3.24.010 Transfer of duties to county – Authority.

The duties of assessment and tax collection for the city, provided by law to be performed by the city clerk as ex-officio assessor and the finance officer of the city, are hereby transferred to the county assessor and the county tax collector of the county of San Diego. Such assessment and tax collection shall be performed by such county assessor and such county tax collector, beginning with the fiscal year 1953-1954, and shall continue for each succeeding fiscal year thereafter until the city shall by ordinance elect not to have such duties performed by such county assessor and county tax collector, all of which is in accordance with and permitted by Sections 51500 to 51519, inclusive, of the Government Code of the state and by Section 502 of the Charter of the city. (Prior code § 30.1).

3.24.020 Payment of collected taxes to city.

All taxes so levied and collected by the county shall be paid by warrant of the county auditor to the finance officer of the city, subject to CVMC 3.24.030. (Prior code § 30.2).

3.24.030 Compensation to county for performance of services.

The amount of compensation to be charged and paid to the county of San Diego for the performance of the services of assessing and collecting taxes for the city shall be fixed by agreement between the board of supervisors of San Diego County and the council; provided, however, that not more than one percent be charged for collecting the first \$25,000 so collected and not more than one-fourth of one percent for all sums over that amount. The auditor of the county is hereby autho-

rized to deduct such compensation from taxes collected under this chapter. (Prior code § 30.3).

3.24.040 Preservation of other duties of clerk and finance officer.

The city clerk and the finance officer of the city, respectively, shall continue to perform all duties to be performed by their offices under the laws of the state, the Charter of the city and the laws of the city other than the assessing of the city property and the collection of taxes. (Prior code § 30.4).

Chapter 3.28

REAL PROPERTY TRANSFER TAX*

Sections:

- 3.28.010 Title.
- 3.28.020 Imposed when – Rate – Payment required.
- 3.28.030 Exemptions – Instruments in writing to secure a debt.
- 3.28.040 Exemptions – Governmental agencies.
- 3.28.050 Exemptions – Conveyances during certain reorganizations and adjustments.
- 3.28.060 Exemptions – Conveyances by order of Securities and Exchange Commission.
- 3.28.070 Partnerships – Exempt when – Not more than one tax to be imposed.
- 3.28.080 Administration.
- 3.28.090 Refunds.
- 3.28.100 Unlawful acts deemed misdemeanors.

* For statutory authority for cities to impose a documentary stamp tax on the sale of real property within the city, see Rev. and Tax. Code § 11901, et seq.

3.28.010 Title.

This chapter shall be known as the “real property transfer tax ordinance of the city of Chula Vista” and is adopted pursuant to Part 6.7 (commencing with Section 11901) of Division 2 of the Revenue and Taxation Code. (Ord. 1090 § 1, 1967; prior code § 30.30).

3.28.020 Imposed when – Rate – Payment required.

There is imposed on each deed, instrument or writing by which any lands, tenements or other realty sold within the city shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrances remaining thereon at the time of sale, exceeds \$100.00, a tax at the rate of \$0.275 for each \$500.00 or fractional part thereof. Said tax shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued. (Ord. 1090 § 1, 1967; prior code § 30.31).

3.28.030 Exemptions – Instruments in writing to secure a debt.

The tax imposed pursuant to this chapter shall not apply to any instrument in writing given to secure a debt. (Ord. 1090 § 1, 1967; prior code § 30.32).

3.28.040 Exemptions – Governmental agencies.

The United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia, shall not be liable for any tax imposed pursuant to this chapter with respect to any deed, instrument or writing to which it is a party, but the tax may be collected by assessment from any other party liable therefor. (Ord. 1090 § 1, 1967; prior code § 30.33).

3.28.050 Exemptions – Conveyances during certain reorganizations and adjustments.

Any tax imposed pursuant to this chapter shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

A. Confirmed under the Federal Bankruptcy Act, as amended;

B. Approved in an equity receivership proceedings in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended;

C. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended; or

D. Whereby a mere change in identity, form or place of organization is effected.

The provisions of this section shall apply only if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval or change. (Ord. 1090 § 1, 1967; prior code § 30.34).

3.28.060 Exemptions – Conveyances by order of Securities and Exchange Commission.

Any tax imposed pursuant to this chapter shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954; provided, that:

A. The order of the Securities and Exchange Commission, in obedience to which such convey-

ance is made, recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79k of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

B. Such order specifies the property which is ordered to be conveyed;

C. Such conveyance is made in obedience to such order. (Ord. 1090 § 1, 1967; prior code § 30.35).

3.28.070 Partnerships – Exempt when – Not more than one tax to be imposed.

A. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise; provided, that:

1. Such partnership, or another partnership, is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954; and

2. Such continuing partnership continues to hold the realty concerned.

B. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value, exclusive of the value of any lien or encumbrance remaining thereon, all realty held by such partnership at the time of such termination.

C. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination described in subsection (B) of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination. (Ord. 1090 § 1, 1967; prior code § 30.36).

3.28.080 Administration.

The county recorder shall administer this chapter in conformity with the provisions of Part 6.7 of Division 2 of the Revenue and Taxation Code and the provisions of any county ordinance adopted pursuant thereto. (Ord. 1090 § 1, 1967; prior code § 30.37).

3.28.090 Refunds.

Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Chapter 5 (commencing with Section 5096) of Part 9 of Division 1 of the Revenue and Taxation Code of the state of California. (Ord. 1090 § 1, 1967; prior code § 30.38).

3.28.100 Unlawful acts deemed misdemeanors.

Any person who willfully attempts in any manner to avoid or defeat the tax imposed by this chapter or the payment of all or any part thereof, or any person required by this chapter to pay the tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay all or any part of such tax, make such return, keep such records, or supply such information at the time or times required by this chapter, or any person required by this chapter to furnish any information to the county recorder who willfully furnishes to the county recorder any information known by him to be fraudulent or to be false as to any material matter, or any person who buys, sells, offers for sale or uses, except as authorized in this chapter, any stamp prescribed by the ordinances of the county of San Diego and by state law for the collection or payment of the tax imposed by this chapter, shall be guilty of a misdemeanor. No person or persons shall be liable, either civilly or criminally, for an unintentional error made in designating the location of the lands, tenements or other realty described in a document subject to the tax imposed by this chapter. (Ord. 1090 § 1, 1967; prior code § 30.39).

Chapter 3.32

RESIDENTIAL CONSTRUCTION TAX*

Sections:

- 3.32.010 Imposition on new units – Purpose and intent.
- 3.32.020 Imposition on units converted from common ownership to individual ownership – Purpose and intent.
- 3.32.030 Definitions.
- 3.32.040 Schedule of tax.
- 3.32.050 Waiver of tax requirements.
- 3.32.060 Deposit of funds.

* CROSS REFERENCE: Open Spaces, see Ch. 17.08 CVMC.

3.32.010 Imposition on new units – Purpose and intent.

A. It is intended that the residential construction tax shall be applicable to all new residential units, including hotels and motels, which although considered as being commercial in nature, generate householders who impose a burden upon the public facilities and infrastructure of the city.

B. It is further intended that all residential units constructed within the city of Chula Vista shall be subject to the residential construction tax and may also be obligated to dedicate park lands or pay fees in lieu thereof as a condition of approval of a subdivision map; provided, however, that the city council may waive all or a portion of either requirement in accordance with the provisions contained herein.

C. The city council declares that the fees required to be paid hereby are assessed pursuant to the taxing power of the city and solely for the purpose of producing revenue. The continued increase in the development of dwelling units in the city with the attendant increase to the population of the city has created an urgency in that there are insufficient funds available for the increased demand for capital items required to serve the increasing population of the city. (Ord. 1805 § 1, 1978; Ord. 1491 § 1, 1973; Ord. 1423 § 1, 1972; Ord. 1366 § 3, 1971; prior code § 35.401(1)).

3.32.020 Imposition on units converted from common ownership to individual ownership – Purpose and intent.

A. It is the purpose of the city council to establish a tax to be paid upon the conversion of apartment buildings or housing projects to a form of

individual ownership of independent units at the same tax rate set forth in the residential construction tax schedule established for condominium ownerships.

It is recognized that the conversion of apartment buildings or projects in multiple-family zones from single, individual, corporate or partnership ownership to condominium or other form of independent ownership, or ownership pursuant to a subdivision of the property, affords to purchasers of such condominiums or independent units a type of single-family ownership status with a greater projected population density than that which would be allowable in the single-family residential zones.

B. Therefore, it is the intent of the council to require payment of a residential conversion tax, which shall be the full amount of the tax required for condominium or subdivided ownership if the residential construction tax was not paid at the time of the construction of the multiple-family dwelling unit; or if such a tax was paid at the time of construction, then an additional tax equivalent to the difference between the original tax paid and that currently imposed upon condominiums or subdivided ownerships shall be required. (Ord. 1805 § 1, 1978; Ord. 1491 § 1, 1973; Ord. 1423 § 1, 1972; Ord. 1366 § 3, 1971; prior code § 35.401(2)).

3.32.030 Definitions.

A. As used in this chapter, the term “dwelling unit” means and includes each single-family dwelling and each separate habitation unit of an apartment, duplex or multiple-dwelling structure designated as a separate habitation for one or more persons, although a part of the same building or structure, or mobile home.

The term “dwelling unit” for the purposes of this chapter also includes a unit of an existing multiple-family dwelling which is to be sold as a condominium, as defined by the Civil Code of this state, or any other form of cooperative ownership.

B. As used in this chapter, the term “person” means and includes every person, firm or corporation constructing, erecting or placing a dwelling unit itself or through the services of any employee, agent or independent contractor. (Ord. 1805 § 1, 1978; Ord. 1423 § 1, 1973; Ord. 1366 § 3, 1971; prior code § 35.403).

3.32.040 Schedule of tax.

A. Every person constructing, erecting or replacing any new dwelling units in the city, or converting any existing units to condominiums, cooperative or subdivided ownership, shall pay to

the city a residential construction tax in accordance with the following schedule:

1. Single-family dwellings: \$450.00 per unit plus \$25.00 for each bedroom in excess of one bedroom;

2. Attached, cluster housing of planned developments under either condominium or subdivided ownership: \$375.00 per unit plus \$25.00 for each bedroom in excess of one bedroom;

3. Duplex units: \$350.00 per unit plus \$25.00 for each bedroom in excess of one bedroom;

4. Multiple-family units: \$250.00 per unit plus \$25.00 for each bedroom in excess of one bedroom;

5. Mobile homes: \$200.00 per unit plus \$25.00 for each bedroom in excess of one bedroom;

6. Residential hotels or motels with individual kitchen facilities: \$150.00 per unit;

7. Residential hotels or motels without individual kitchen facilities: \$100.00 per unit;

8. Transient hotels or motels: \$75.00 per unit.

B. For the purpose of implementing the fee schedule set forth in subsection (A) of this section, any rooms as shown on plans submitted by the subdivider, regardless of their designation thereon, which may be used for bedroom purposes shall be regarded as a bedroom.

C. Such taxes shall be due and payable upon application to the city for a building permit for the construction of any such dwelling unit; provided, however, that there shall be a refund of such taxes in the event the building permit is not approved, or is not used, for such construction.

D. Further, the taxes for the conversion of ownership as indicated in CVMC 3.32.020 shall be payable upon application to the city for a certificate of occupancy, as specified in Sections 306 and 502 of the Uniform Building Code, 1970 Edition, and as required for such conversion pursuant to CVMC 15.56.010; provided, however, that there shall be a refund of such taxes in the event that the apartment building or project is not ultimately converted to condominium or independent dwelling unit ownership. (Ord. 1805 § 1, 1978; Ord. 1667 § 1, 1976; Ord. 1491 § 1, 1973; Ord. 1366 § 3, 1971; prior code § 35.402).

3.32.050 Waiver of tax requirements.

A. Recommendation of Planning Commission. The city council may, upon the request of a developer, waive all or a portion of this tax for any of

said dwelling-unit types listed hereinabove in this chapter to be constructed or converted within the already developed and previously subdivided urban core of the city or for any dwelling-unit types constructed anywhere within the city which would serve as housing for low and moderate income families; provided further, that the council shall waive the tax requirements where land is dedicated for park purposes.

B. Recommendation of Redevelopment Agency. The city council may, upon the recommendation of the Chula Vista redevelopment agency, waive all or a portion of the tax for any of said dwelling-unit types listed hereinabove to be constructed or converted within an established redevelopment project. (Ord. 1805 § 1, 1978; Ord. 1491 § 1, 1973; Ord. 1366 § 3, 1971; prior code § 35.404).

3.32.060 Deposit of funds.

All of the sums collected pursuant to this chapter shall be deposited in a residential construction/conversion fund in the capital projects fund classification. (Ord. 1805 § 1, 1978).

Chapter 3.36

UNIFORM LOCAL SALES AND USE TAX*

Sections:

- 3.36.010 Short title.
- 3.36.020 Purpose – Interpretation.
- 3.36.030 Operative date – Contract with State Board of Equalization.
- 3.36.040 Sales tax – Imposition – Rate.
- 3.36.050 Sales tax – Location where retail sales consummated.
- 3.36.060 Sales tax – Statutory authority adopted.
- 3.36.070 Sales tax – Substitution of terms applicable when.
- 3.36.080 Sales tax – Seller’s permit not required when.
- 3.36.090 Sales tax – Exclusions.
- 3.36.100 Sales tax – Exclusions.
- 3.36.110 Use tax – Imposition – Rate.
- 3.36.120 Use tax – Statutory authority adopted.
- 3.36.130 Use tax – Substitution of terms applicable when.
- 3.36.140 Use tax – Exemptions.
- 3.36.150 Use tax – Exemptions.
- 3.36.160 Adoption of amendments to state code.
- 3.36.170 Alternating applicability of exemption provisions.
- 3.36.180 Enjoining collection prohibited.
- 3.36.190 Prior ordinances to be effective when.

* For statutory provisions regarding the Uniform Local Sales and Use Tax Act, see Rev. and Tax. Code § 7200, et seq.; for provision for a sales and use tax, see Gov. Code § 37101.

3.36.010 Short title.

This chapter shall be known as the “uniform local sales and use tax law of the city.” (Prior code § 30.5).

3.36.020 Purpose – Interpretation.

The council declares that this chapter is adopted to achieve the following, among other purposes, and directs that the provisions of this chapter be interpreted in order to accomplish those purposes:

A. To adopt a sales and use tax law which complies with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code of the state;

B. To adopt a sales and use tax law which incorporates provisions identical to those of the Sales

and Use Tax Law of the state insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.5 of Division 2 of the Revenue and Taxation Code of the state;

C. To adopt a sales and use tax law which imposes a one percent tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the state sales and use taxes;

D. To adopt a sales and use tax law which can be administered in a manner that will, to the degree possible consistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions of this chapter. (Ord. 775 § 1, 1961; prior code § 30.6).

3.36.030 Operative date – Contract with State Board of Equalization.

This chapter shall become operative on April 1, 1956, and prior thereto this city shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this sales and use tax law; provided, however, that if this city shall not have contracted with the State Board of Equalization, as above set forth, prior to April 1, 1956, this chapter shall not be operative until the first day of the first calendar quarter following the execution of such a contract by the city and by the State Board of Equalization; provided further, that this chapter shall not become operative prior to the operative date of the uniform local sales and use tax ordinance of the county of San Diego. (Prior code § 30.7).

3.36.040 Sales tax – Imposition – Rate.

For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the city at the rate of one percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the city on and after April 1, 1956. (Prior code § 30.8(A)(1)).

3.36.050 Sales tax – Location where retail sales consummated.

For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is

delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Board of Equalization. (Ord. 775 § 2, 1961; prior code § 30.8(A)(2)).

3.36.060 Sales tax – Statutory authority adopted.

Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code of the state, all of the provisions of Part 1 of Division 2 of such code, as amended and in force and effect on April 1, 1956, applicable to sales taxes are hereby adopted and made a part of this section as though fully set forth herein. (Prior code § 30.8(B)(1)).

3.36.070 Sales tax – Substitution of terms applicable when.

Wherever, and to the extent that, in Part 1 of Division 2 of the Revenue and Taxation Code the state is named or referred to as the taxing agency, the city shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of the city for the word “state” when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the state; nor shall the name of the city be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter; and neither shall the substitution be deemed to have been made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state where the result of the substitution would be to provide an exemption from this tax with respect to certain gross receipts which would not otherwise be exempt from this tax, while those gross receipts remain subject to tax by the state under the provisions of Part 1 of Division 2 of

the Revenue and Taxation Code; nor to impose this tax with respect to certain gross receipts which would not be subject to tax by the state under such provisions of that code; and in addition, the name of the city shall not be substituted for that of the state in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the Revenue and Taxation Code of the state as adopted. (Prior code § 30.8(B)(2)).

3.36.080 Sales tax – Seller’s permit not required when.

If a seller’s permit has been issued to a retailer under Section 6067 of the said Revenue and Taxation Code, an additional seller’s permit shall not be required by reason of this section. (Ord. 1501 § 1, 1973; prior code § 30.8(B)(3)).

3.36.090 Sales tax – Exclusions.

There shall be excluded from the gross receipts by which the tax is measured:

A. The amount of any sales or use tax imposed by the state upon a retailer or consumer;

B. Receipts from sales to operators of common carriers and waterborne vessels of property to be used or consumed in the operation of such common carriers or waterborne vessels principally outside of this city. (Ord. 775 § 4, 1961; prior code § 30.8(B)(4)).

3.36.100 Sales tax – Exclusions.

There shall be excluded from the gross receipts by which the tax is measured:

A. The amount of any sales or use tax imposed by the state of California upon a retailer or consumer;

B. The gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government. (Ord. 2055 § 1, 1983; Ord. 1501 § 2, 1973; prior code § 30.8(B)(4.5)).

3.36.110 Use tax – Imposition – Rate.

An excise tax is imposed on the storage, use or other consumption in the city of tangible personal property purchased from any retailer, on or after the operative date of this chapter, for storage, use or other consumption in the city at the rate of one percent of the sales price of the property. The sales price shall include delivery charges when such

charges are subject to state sales or use tax, regardless of the place to which delivery is made. (Prior code § 30.9(A)).

3.36.120 Use tax – Statutory authority adopted.

Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of Part 1.5 of Division 2 of the Revenue and Taxation Code of the state, all of the provisions of Part 1 of Division 2 of such code, as amended and in force and effect on April 1, 1956, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein. (Prior code § 30.9(B)(1)).

3.36.130 Use tax – Substitution of terms applicable when.

Wherever, and to the extent that, in Part 1 of Division 2 of the said Revenue and Taxation Code the state of California is named or referred to as the taxing agency, the name of this city shall be substituted therefor. Nothing in this section shall be deemed to require the substitution of the name of this city for the word “state” when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the state of California; nor shall the name of the city be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this chapter; and neither shall the substitution be deemed to have been made in those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state of California, where the result of the substitution would be to provide an exemption from this tax with respect to certain storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax, while such storage, use or other consumption remains subject to tax by the state under the provisions of Part 1 of Division 2 of the said Revenue and Taxation Code, or to impose this tax with respect to certain storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provisions of that code; and in addition, the name of the city shall not be substituted for that of the state in Sections 6701, 6702 (except in the last

sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the said Revenue and Taxation Code as adopted, and the name of the city shall not be substituted for the word “state” in the phrase “retailer engaged in business in this state” in Section 6203, nor in the definition of that phrase in Section 6203. (Ord. 775 § 5, 1961; prior code § 30.9(B)(2)).

3.36.140 Use tax – Exemptions.

There shall be exempt from the tax due under this section:

A. The amount of any sales or use tax imposed by the state upon a retailer or consumer;

B. The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this state;

C. The storage or use of tangible personal property in the transportation or transmission of persons, property or communications, or in the generation, transmission or distribution of electricity or in the manufacture, transmission or distribution of gas in intrastate, interstate or foreign commerce by public utilities which are regulated by the Public Utilities Commission of this state. (Ord. 2055 § 2, 1983; Ord. 775 § 6, 1961; prior code § 30.9(B)(3)).

3.36.150 Use tax – Exemptions.

There shall be exempt from the tax due under this section:

A. The amount of any sales or use tax imposed by the state of California upon a retailer or consumer;

B. The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this state;

C. In addition to the exemptions provided in Section 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity, issued pursuant to the laws of this state, the United States, or any for-

eign government. (Ord. 2055 § 3, 1983; Ord. 1501 § 3, 1973; prior code § 30.9(B)(3.5)).

3.36.160 Adoption of amendments to state code.

All amendments of the Revenue and Taxation Code of the state enacted subsequent to April 1, 1956 which relate to the sales and use tax and which are not inconsistent with Part 1.5 of Division 2 of the Revenue and Taxation Code shall automatically become a part of this chapter. (Prior code § 30.10).

3.36.170 Alternating applicability of exemption provisions.

A. CVMC 3.36.100 and 3.36.150 shall become operative on January 1st of the year following the year in which the State Board of Equalization adopts an assessment ratio for state-assessed property which is identical to the ratio which is required for local assessments by Section 401 of the Revenue and Taxation Code, at which time CVMC 3.36.090 and 3.36.140 shall become inoperative.

B. In the event that CVMC 3.36.100 and 3.36.150 become operative and the State Board of Equalization subsequently adopts an assessment ratio for state-assessed property which is higher than the ratio which is required for local assessments by Section 401 of the Revenue and Taxation Code, CVMC 3.36.090 and 3.36.140 shall become operative on the first day of the month following the months in which such higher ratio is adopted, at which time CVMC 3.36.100 and 3.36.150 shall become inoperative until the first day of the month following the month in which the Board again adopts an assessment ratio for state-assessed property which is identical to the ratio required for local assessments by Section 401 of the Revenue and Taxation Code, at which time CVMC 3.36.100 and 3.36.150 shall again become operative and CVMC 3.36.090 and 3.36.140 shall become inoperative. (Ord. 1501 § 4, 1973; prior code § 30.11).

3.36.180 Enjoining collection prohibited.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the state or this city, or against any officer of the state or this city, to prevent or enjoin the collection under this article, or Part 1.5 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected. (Ord. 1501 § 4, 1973; prior code § 30.12).

3.36.190 Prior ordinances to be effective when.

At the time this chapter goes into operation, the provisions of Ordinance Nos. 371 and 439, as amended, shall be suspended and shall not again be of any force or effect until and unless for any reason the State Board of Equalization ceases to perform the functions incident to the administration and operation of the sales and use tax hereby imposed; provided, however, that if for any reason it is determined that the city is without power to adopt this chapter, or that the State Board of Equalization is without power to perform the functions incident to the administration and operation of the taxes imposed by this chapter, the provisions of Ordinance Nos. 371 and 439, as amended, shall not be deemed to have been suspended, but shall be deemed to have been in full force and effect at the rate of one percent continuously from and after April 1, 1956. Upon the ceasing of the State Board of Equalization to perform the functions incident to the administration and operation of the taxes imposed by this chapter, the provisions of Ordinance Nos. 371 and 439, as amended, shall again be in full force and effect at the rate of one percent. Nothing in this chapter shall be construed as relieving any person of the obligation to pay to the city any sales or use tax accrued and owing by reason of the provisions of Ordinance Nos. 371 and 439, as amended, in force and effect prior to and including March 31, 1956. (Ord. 1501 § 4, 1973; prior code § 30.13).

Chapter 3.40

TRANSIENT OCCUPANCY TAX*

Sections:

- 3.40.010 Title.
- 3.40.020 Definitions.
- 3.40.030 Imposition – Rate – Payment – Annual abatement.
- 3.40.040 Exemptions.
- 3.40.050 Operator – Collection duties generally.
- 3.40.060 Operator – Registration and certificate required – Contents – Posting.
- 3.40.070 Operator – Returns, reports and payments required when.
- 3.40.080 Delinquent remittance, fraud or audit deficiency – Penalties designated.
- 3.40.090 Failure to collect or report tax – Determination procedure – Notice.
- 3.40.100 Failure to collect or report tax – Public hearing when – Procedure.
- 3.40.110 Appeal procedure.
- 3.40.120 Operator – Record keeping duty.
- 3.40.130 Refunds.
- 3.40.140 Actions to collect.
- 3.40.150 Finance director regulation prescription authority.
- 3.40.160 Successor to business – Duty to withhold tax.
- 3.40.170 Successor to business – Liability for failure to withhold – Duration of liability.
- 3.40.180 Disposition of revenues – Utilization.
- 3.40.190 Violation deemed misdemeanor – Penalty.

* For statutory provisions authorizing cities to impose a tax on transients who occupy room space within the city, see Rev. and Tax. Code §§ 7280 and 7281.

3.40.010 Title.

This chapter shall be known as the “transient occupancy tax ordinance of the city of Chula Vista.” (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.301).

3.40.020 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

A. “Hotel” means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling,

lodging or sleeping purposes and is held out as such to the public. “Hotel” does not mean any hospital, convalescent home or sanitarium;

B. “Campsite” means any area which is occupied or intended or designed or improved for occupancy by transients utilizing recreational vehicles, motor homes, or mobile trailers for dwelling, lodging or sleeping purposes and is held out as such to the public. “Campsite” does not include any mobile home park;

C. “Occupancy” means the use or possession, or the right to the use or possession, of any room or rooms, or portion thereof, in any hotel for dwelling, lodging or sleeping purposes;

D. “Operator” means the person who is proprietor of the hotel, or manager of the campsite, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both;

E. “Person” means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit;

F. “Rent” means the consideration charged for the occupancy of space in a hotel or campsite valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever;

G. “Transient” means any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. Any person who in fact exercises occupancy or is in fact entitled to occupancy for a period of 31 days or more, counting portions of calendar days as full days, shall be deemed not to have been a transient with respect to the first 30 days of occupancy or entitlement to occupancy. (Ord. 1804 § 1, 1978; Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.302).

3.40.030 Imposition – Rate – Payment – Annual abatement.

A. For the privilege of occupancy in any hotel or campsite, each transient is subject to and shall pay a tax in the amount of 10 percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel or campsite at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel or campsite. If for any reason the tax due is not paid to the operator of the hotel or campsite, the director of finance may require that such tax shall be paid directly to the director of finance of the city.

B. Notwithstanding anything else to the contrary in this section contained, the city council is hereby authorized, but is not required, to lower the tax, or the rate of tax imposed under the authority of this chapter, but to no less than what the tax would be at a rate of eight percent, for no more than one calendar year, if within three months prior to the commencement of a given calendar year, it conducts a public hearing at which it publicly deliberates on the advisability of doing so, notice of which public hearing is published in a newspaper of general circulation at least twice, not sooner than 20 days and not later than five days prior thereto, of its intent to deliberate upon said matter. Failure to publish notice of the public hearing, as herein required, shall not affect the right of the city council to conduct the public hearing and to abate all or any portion of the tax herein imposed. (Ord. 2407 § 1, 1990; Ord. 1804 § 1, 1978; Ord. 1471 §§ 1, 2, 1973; Ord. 1339 § 1, 1971; Ord. 1159 § 1, 1958; Ord. 986 § 1, 1966; prior code § 7.303).

3.40.040 Exemptions.

Except as may be otherwise provided by law, there shall be no exemption from the imposition of this tax for federal, state or local officers and employees traveling on official business; provided further, that this tax shall not be imposed for any accommodations where the rental thereof is at the rate of \$5.00 a day or less. (Ord. 1804 § 1, 1978; Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.304).

3.40.050 Operator – Collection duties generally.

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax, or any part thereof, will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded, except in the manner hereinafter provided. (Ord. 1804 § 1, 1978; Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.305).

3.40.060 Operator – Registration and certificate required – Contents – Posting.

Within 30 days after July 23, 1971, or within 30 days after commencing business, whichever is later, each operator of any hotel or campsite renting occupancy to transients shall register said hotel or campsite with the director of finance and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel or campsite;
- C. The date upon which the certificate was issued;
- D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Occupancy Tax Ordinance by registering with the director of finance for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the director of finance. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this city. This certificate does not constitute a permit." (Ord. 1804 § 1, 1978; Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.306).

3.40.070 Operator – Returns, reports and payments required when.

A. Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the director of finance, make a return to the director of finance, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of tax collected shall be remitted to the director of finance. The director of finance may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax, and he may require further information in the return. Returns filed or taxes remitted and actually received by the director of finance on or before the last day of the month following the close of each calendar quarter shall be deemed timely filed or remitted. Returns filed or taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns or taxes is addressed to the director of finance, has sufficient postage and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting or remitting without penalty. If such envelope or other container bears a postage meter imprint as well as a United States post office cancellation mark, the latter shall govern in determining whether the filing or remittance is timely.

B. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the director of finance. All returns and payments submitted by each operator shall be treated as confidential by the director of finance and shall not be released by him except upon order of a court of competent jurisdiction or to an officer or agent of the United States, the state of California, the county of San Diego, or the city, for official use only. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.307).

3.40.080 Delinquent remittance, fraud or audit deficiency – Penalties designated.

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10 percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any operator who fails to remit any delinquent remittance within 30 days following the date on which the remittance first became delinquent shall pay a second delinquent penalty of 10 percent of the amount of the tax and the 10 percent penalty first imposed; provided, that the director of finance has notified, by certified or registered United States mail, the operator of the delinquency and the 10 percent penalty first imposed, such notification to be given within the 30-day period of the initial delinquency; and provided, that the operator has not paid the tax and penalty due within 14 days after notification or within the 30-day period of the initial delinquency, whichever is later.

C. Fraud. If the director of finance determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (A) and (B) of this section.

D. Audit Deficiency. If, upon audit by the city, an operator is found to be deficient in his return or his remittance or both, the director of finance shall immediately notify the operator of the net deficiency and the original 10 percent delinquency penalty. If the operator fails or refuses to pay the deficient amount and applicable penalties within 14 days after the date of the director of finance's notice, the penalties prescribed in subsection (B) of this section shall apply, using the fifteenth day after the date of the director of finance's notice as the date when the continued delinquency penalty first applies. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.308).

3.40.090 Failure to collect or report tax – Determination procedure – Notice.

If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the director of finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the director of finance procures such facts and information as he is able to obtain, upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect same and to make such report and remittance, he shall proceed to determine and assess against such operator the tax and penalties provided for by this chapter. In case such determination is made, the director of finance shall give

notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.309(1)).

3.40.100 Failure to collect or report tax – Public hearing when – Procedure.

The operator described in CVMC 3.40.090 may, within 10 days after the serving or mailing of such notice, make application in writing to the director of finance for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax and penalties, if any, determined by the director of finance shall become final and conclusive and immediately due and payable. If such application is made, the director of finance shall give not less than five days' written notice in the manner prescribed herein to the operator to show cause, at a time and place fixed in said notice, why the amount specified therein should not be fixed for such tax and penalties. At such hearing, the operator may appear and offer evidence why such specified tax and penalties should not be so fixed. After such hearing, the director of finance shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax and penalties. The amount determined to be due shall be payable after 15 days, unless an appeal is taken as provided in CVMC 3.40.110. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.309(2)).

3.40.110 Appeal procedure.

Any operator aggrieved by any decision of the director of finance with respect to the amount of such tax and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within 15 days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.310).

3.40.120 Operator – Record keeping duty.

It is the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the director of finance shall have the right to inspect at all reasonable times. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.311).

3.40.130 Refunds.

A. Whenever the amount of any tax or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsection (B) and (C) of this section; provided, a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the director of finance within three years of the date of payment. The claim shall be on forms furnished by the director of finance.

B. An operator may claim a refund or take a credit against taxes collected and remitted of the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the director of finance that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection (A) of this section, but only when the tax was paid by the transient directly to the director of finance, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the director of finance that the transient has been unable to obtain a refund from the operator who collected the tax.

D. An operator who has remitted an amount in excess of the amount required to be paid by this chapter may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the city, no claim need be filed by the operator. Such credit, if approved by the director of finance, shall be applied to any deficiency found or

any further tax payments due under the rules prescribed by the director of finance.

E. No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.312).

3.40.140 Actions to collect.

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed to be a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.313).

3.40.150 Finance director regulation prescription authority.

The director of finance may prescribe reasonable regulations to implement the provisions of this chapter. Such regulations shall become effective upon approval by the city council. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; prior code § 7.314).

3.40.160 Successor to business – Duty to withhold tax.

If any operator who is liable for any tax or penalty under this chapter sells or otherwise disposes of his business, his successor shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the director of finance showing that the tax or penalty has been paid or a certificate from the director of finance stating that no tax or penalty is due. If the seller does not present a receipt or certificate within 30 days after such successor commences to conduct business, the successor shall deposit the withheld amount with the director of finance, pending settlement of the account of the seller. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; prior code § 7.315).

3.40.170 Successor to business – Liability for failure to withhold – Duration of liability.

If the successor to the business fails to withhold a portion of the purchase price as required, he shall be liable for the payment of the amount required to be withheld. Within 30 days after receiving a writ-

ten request from the successor for a certificate, the director of finance shall either issue the certificate or mail notice to the successor at his address, as it appears on the records of the director of finance, of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate. The time period within which the obligation of a successor may be enforced shall commence at the time the operator sells or otherwise disposes of his business or at the time that the determination against the operator becomes final, whichever event occurs later, and shall expire, in the absence of fraud, three years thereafter. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; prior code § 7.316).

3.40.180 Disposition of revenues – Utilization.

All revenues collected by the city under this chapter and remaining after payment of the costs incurred in the administration of this chapter shall be deposited in the general fund and the council may, from time to time, by resolution, specifically designate the purpose for which these revenues may be utilized. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.318).

3.40.190 Violation deemed misdemeanor – Penalty.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor and shall be punishable therefor by a fine of not more than \$500.00 or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the director of finance, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid. Any person required to make, render, sign or verify any report or claim who makes a false or fraudulent report or claim, with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Ord. 1471 § 1, 1973; Ord. 1339 § 1, 1971; Ord. 986 § 1, 1966; prior code § 7.317).

Chapter 3.41**REGISTRATION OF TRANSIENTS AT HOTELS AND MOTELS**

Sections:

- 3.41.010 Purpose.
- 3.41.020 Definitions.
- 3.41.030 Regulations.
- 3.41.040 Administration.
- 3.41.050 Frequency of rental.
- 3.41.060 Violations.

3.41.010 Purpose.

The city council finds and determines that it is important for the safety of visitors to our community and to control vice, disturbance, and narcotics offenses to require transient residents of hotels and motels to furnish identification at the time of registration and for operators to have evidence of identification available for reasonable inspection by a peace officer. The city council further finds that furnishing identification at the time of registration does not impede hotel or motel business and is not overly invasive to patron privacy. (Ord. 2794 § 1, 1999).

3.41.020 Definitions.

The terms “operator,” “transient” and “hotel” are defined in CVMC 3.40.020. (Ord. 2794 § 1, 1999).

3.41.030 Regulations.

A. Every transient shall furnish to an operator of a hotel satisfactory identification as a part of the registration process for the hire of lodgings at that hotel by the transient.

B. Satisfactory identification for legal residents of the United States shall consist of one of the following: a valid driver’s license issued by the transient’s state; a federal or state government or military identification card; a passport; or any other form of valid governmental identification on which the transient’s photograph appears. For persons legally residing outside of the United States, valid governmental identification shall include an official passport, U.S. visa, INS alien registration card or INS border crossing card.

C. The operator of the hotel shall maintain a record of the following identification produced by the transient. The record shall include the name of transient, current address, ID number and state or country of issue and date of birth. Irrespective of

method of payment, the hotel operator shall comply with subsection (A) of this section.

D. An operator shall notify any transient who fails or refuses to provide proper identification or refuses to identify occupants to any operator that a room will not be rented.

E. The duties imposed on an operator by this chapter shall not be interpreted or applied so as to violate or cause the violation of the Americans with Disabilities Act of 1990 (PL 101-336). (Ord. 2794 § 1, 1999).

3.41.040 Administration.

Operator may post a notice advising transients that a transient is liable for any room charges or damage to the room during the term of hire, whether caused by the transient or other authorized occupant, or both, until the room is vacated by the transient and all authorized occupants and keys are returned to the operator. The notice may also provide that the transient may be held liable for charges or damage caused by an occupant who was not identified by the transient but occupied the room with the transient’s permission. (Ord. 2794 § 1, 1999).

3.41.050 Frequency of rental.

The operator shall not rent any room more than two times during any 24-hour period, beginning at 12:00 noon and ending at 12:00 noon the following day. (Ord. 2794 § 1, 1999).

3.41.060 Violations.

It is unlawful for an operator of a hotel to fail to require a transient to provide photo identification; to fail to retain the information required by CVMC 3.41.030(B); or to refuse to provide such information to a police officer conducting an investigation; provided, however, that any duty required under CVMC 3.41.030(C) terminates on and after the sixty-first day following the date the transient vacates the lodging.

It is unlawful for any operator to rent the same room, or to rent to the same transient, more than two times during any 24-hour period, beginning at the time of check-in. (Ord. 2794 § 1, 1999).

Chapter 3.44

UTILITY USERS' TAX

Sections:

- 3.44.010 Purpose and intent – Definitions.
- 3.44.020 Exemptions – Generally.
- 3.44.021 Exemptions – Senior citizens.
- 3.44.022 *Repealed.*
- 3.44.030 Telephone users' tax – Imposition – Rate – Collection – Exemptions – Charges defined.
- 3.44.040 Electricity users' tax – Imposition – Rate – Collection – Exemptions – Rebates.
- 3.44.050 Gas users' tax – Imposition – Rate – Collection – Exemptions – Rebates.
- 3.44.060 Delinquent payments – Determination – Interest and penalties.
- 3.44.070 Actions to collect.
- 3.44.080 Duty to collect and remit – Billing procedure.
- 3.44.090 Administration and enforcement.
- 3.44.100 Assessment for taxes not remitted – Notice – Hearing – Exceptions.
- 3.44.110 Recordkeeping duty.
- 3.44.120 Refunds.
- 3.44.130 Disposition of revenues – Utilization.
- 3.44.140 Effective date – Billing procedure.
- 3.44.150 Establishment of rate – Public hearing requirements – Power to abate.
- 3.44.160 Violations deemed infractions.

3.44.010 Purpose and intent – Definitions.

A. In amending the utility users' tax ordinance, it is the purpose and intent of the city council to achieve three major goals. First, it is necessary and desirable to generate for fiscal year 1978-79 a minor increase in revenue from the utility tax while retaining the program of basing the taxation on units of energy, used to benefit both business enterprises and smaller utility using taxpayers, to supplement the revenues derived from the distribution of the surplus by the state of California. Second, it is essential to provide an additional increase in the utility users' tax in order to insure a reasonable level of revenue for the necessary operations of the city of Chula Vista in fiscal year 1979-80 and beyond, if no state surplus assistance is then available, and if there has been no governmental reorganization achieved which would provide necessary tax relief to local governments. Third, both the major commercial and industrial enterprises of the city utilizing energy and providing both productiv-

ity and employment, as well as the smaller utility using taxpayers, must be protected from increases in the tax brought about by the increases of rates granted by the Public Utilities Commission. These goals can best be accomplished by establishing an increase in the present factor to .00250 per kilowatt of electricity and .00919 per therm of gas for fiscal year 1978-79, and secondly, by establishing a second increase in said factors to .00300 per kilowatt of electricity and .01103 per therm of gas commencing on July 1, 1979, and establishing a five percent tax rate based upon gross receipts for fiscal year 1978-79, and six percent commencing on July 1, 1979, for telephone, and subjecting said tax rates to semi-annual adjustments after appropriate public hearings are conducted by the city council. In addition, the city council is authorized to waive all or a portion of the tax for major commercial and industrial enterprises as well as to provide a clear exemption for senior citizens in order to insure the most equitable application of the tax.

B. Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

1. "Month" means a calendar month for purposes of the delivery of collected taxes by the utility companies to the city, and the billing period for the service user for the purpose of collection of tax by the utility companies from the service user.

2. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation (except public utilities), estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

3. "Public utility" as used herein has the same meanings as defined in Sections 218, 222 and 234, respectively, of the Public Utilities Code of the state of California, as said sections existed on September 1, 1970.

4. "Service user" means a person required to pay a tax imposed under the provisions of this chapter. (Ord. 2423 § 1, 1990; Ord. 2414 § 1, 1990; Ord. 1803 § 1, 1978; Ord. 1754 § 1, 1977; Ord. 1288 § 1, 1970; prior code § 30.501).

3.44.020 Exemptions – Generally.

Nothing in this chapter shall be construed as imposing a tax upon any person when imposition of such tax upon that person would be in violation of the Constitution of the United States or that of the state of California. (Ord. 1288 § 1, 1970; prior code § 30.502).

3.44.021 Exemptions – Senior citizens.

A. The tax imposed by this chapter shall not apply to any individual 62 years of age or older who uses telephone, electric and gas in or upon any premises occupied by such individual; provided, the combined gross income of all members of the household in which such individual resided was less than 50 percent of the median family income for the given household size for the calendar year prior to the fiscal year (July 1st through June 30th) for which the exemption provided in this chapter is applied. Said income statistics shall be as determined annually for San Diego Metropolitan Statistical Area by the federal Department of Housing and Urban Development (HUD).

The exemption granted by this section shall not eliminate the duty of the service suppliers from collecting taxes from such exempt individuals or the duty of such exempt individuals from paying such taxes to the service suppliers, unless an exemption is applied for by the service user and granted in accordance with the provisions of subsection (B) of this section.

B. Any service user exempt from the taxes imposed by this chapter because of the provisions of subsection (A) of this section may file an application with the director of finance for an exemption. Such an application shall be made upon forms supplied by the director of finance and shall recite facts verified by declaration under penalty of perjury which qualify the applicant for an exemption. The director of finance shall review all such applications and certify as exempt those applicants determined to qualify therefor and shall notify all service suppliers affected that such exemption has been approved, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure. The certification of such application for exemption shall be granted if the eligibility requirements of subsection (A) of this section are met, except that no exemption shall be granted to an applicant who is receiving service from a service supplier through a master meter, or who is sharing or prorating service with other service users, even though such service users qualify under the provisions of subsection (A) of this section; provided, however, that the person receiving service through a master meter or sharing or prorating service with other service users shall be eligible for a rebate of the utility users' tax in the amount of \$12.00 per year, or any larger amount, upon a

showing of actual billing from the person having control of said master meter, to be paid at the beginning of each fiscal year for the preceding fiscal year, commencing on July 1, 1977. Such person seeking said rebate must file the application therefor on or before September 1st of each year to receive said rebate for the preceding fiscal year. It is further provided that said rebate may be prorated if the applicant has not resided in the same location for the full preceding fiscal year. No exemption shall be granted with respect to any tax imposed by this chapter which is or has been paid by a public agency or where the applicant receives funds from a public agency specifically for the payment of such tax.

Upon receipt of such notice, the service supplier shall not be required to continue to bill any further tax imposed by this chapter from such exempt service user until further notice by the director of finance is given. The service supplier shall eliminate such exempt service user from its tax billing procedure for bills dated on or after July 1, 1976 upon receipt of such notice from the director of finance prior to July 1, 1976, and thereafter, from bills dated no later than 60 days after receipt of such notice from the director of finance.

All exemptions shall continue and be renewed automatically by the director of finance so long as the prerequisite facts supporting the initial qualification for exemption continue; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; and further provided, that such individual may nevertheless apply for a new exemption with each change of address or residence. Any individual exempt from the tax shall notify the director of finance within 10 days of any change in fact or circumstance which might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemptions provided by this section when the basis for such exemption either does not exist or ceases to exist.

Notwithstanding any of the provisions of this subsection, however, any service supplier who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of any exemption issued to a previous user or exempt user of the same meter or connection, such service supplier shall immediately notify the director of finance of such fact, and the director of finance shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with

and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user. (Ord. 2547 § 1, 1993; Ord. 1717 § 1, 1976; Ord. 1690 § 1, 1976).

3.44.022 Maximum limitations.

Repealed by Ord. 1803 § 2, 1978. (Ord. 1754 § 1, 1977).

3.44.030 Telephone users' tax – Imposition – Rate – Collection – Exemptions – Charges defined.

A. There is imposed a tax upon every person in the city using intrastate telephone communication services in the city. The tax imposed by this section shall be at the rate of five percent of the charges made for such services, and shall be paid by the person paying for such services. Effective on July 1, 1979, said rate shall be increased to six percent of the charges made for such services and shall be paid by the person paying for such service.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones, except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due. The term "charges" shall not include charges for services paid for by users of mobile telephone and marine telephone service.

C. Notwithstanding the provisions of subsection (A) of this section, the tax imposed under this section shall not be imposed upon any person for using intrastate telephone communications services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Sections 4251, 4252 and 4253 of Title 26 of the United States Code ("federal excise tax"). In the event that the federal excise tax is repealed, this reference to such law, including any related federal regulations, private letter rulings, case law and other opinions interpreting these sections shall refer to that body of law that existed immediately prior to the effective date of such repeal.

D. The tax imposed in this section shall be collected from the service user by the person providing the intrastate telephone communications services. The amount of tax collected in one month shall be remitted to the city finance officer on or before the twentieth day of the following month. (Ord. 2816 § 1, 2000; Ord. 2423 § 1, 1990; Ord.

2414 § 2, 1990; Ord. 1803 § 1, 1978; Ord. 1690 § 1, 1976; Ord. 1288 § 1, 1970; prior code § 30.503).

3.44.040 Electricity users' tax – Imposition – Rate – Collection – Exemptions – Rebates.

A. There is imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at a rate established by the imposition of the factor of .00250 for each kilowatt of such energy used and shall be paid by the person paying for such energy. Effective on July 1, 1979, the tax imposed by this section shall be at a rate established by the imposition of the factor of .00300 for each kilowatt of such energy used and shall be paid by the person paying for such energy. "Charges" as used in this section shall include charges made for metered energy and minimum charges for service, including customer charges, service charges, service establishment charges, demand charges, standby charges, and annual and monthly charges.

B. As used in this section, the term "using electrical energy" shall not be construed to mean the storage of such energy by a person in a battery owned or possessed by him for use in an automobile or other machinery or device, apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries; nor shall the term include the mere receiving of such energy by an electric public utility at a point within the city for resale.

C. There shall be excluded from such tax all electricity used by public utility in the conduct of its business.

D. The tax imposed in this section shall be collected from the service user by the person supplying such energy. The amount of tax, computed by application of the factors set forth hereinabove for each kilowatt of energy used each month, less the tax-exempt accounts and reduced by previous months' uncollectible accounts upon which said tax was applied, shall be remitted to the city finance officer on or before the last day of the month following the close of the taxing period. It is understood that the amount of said uncollectible accounts or "bad debts" shall be determined on the basis of the current month's bad debts, less collections of previously deducted bad debts.

E. The city shall assume full responsibility for rebates to any fully or partially exempted users after the utility company has collected and remitted

said accounts in full to the city. (Ord. 2423 § 1, 1990; Ord. 2414 § 3, 1990; Ord. 1803 § 1, 1978; Ord. 1754 § 1, 1977; Ord. 1690 § 1, 1976; Ord. 1288 § 1, 1970; prior code § 30.504).

3.44.050 Gas users' tax – Imposition – Rate – Collection – Exemptions – Rebates.

A. There is imposed a tax upon every person in the city using in said city gas which is delivered through mains or pipes. The tax imposed by this section shall be at a rate established by the imposition of the factor of .00919 for each therm of such energy used and shall be paid by the person paying for such energy. Effective on July 1, 1979, the tax imposed by this section shall be at a rate established by the imposition of the factor of .01103 for each therm of such energy used and shall be paid by the person paying for such energy. "Charges" as used in this section shall include charges for service, including customer charges, service charges, service establishment charges, demand charges, standby charges, and annual and monthly charges.

B. There shall be excluded from such tax all gas used by a public utility in the conduct of its business.

C. The tax imposed in this section shall be collected from the service user by the person selling the gas. The amount of tax, computed by application of the factors set forth hereinabove for therms of energy used each month, less the tax exempt accounts and reduced by previous months' uncollectible accounts upon which said tax was applied, shall be remitted to the city finance officer on or before the last day of the month following the close of the taxing period. It is understood that the amount of said uncollectible accounts for bad debts shall be determined on the basis of the current month's bad debts, less collections of previously deducted bad debts.

D. The city shall assume full responsibility for rebates to any fully or partially exempted users after the utility company has collected and remitted said accounts in full to the city. (Ord. 2423 § 1, 1990; Ord. 2414 § 4, 1990; Ord. 1803 § 1, 1978; Ord. 1754 § 1, 1977; Ord. 1690 § 1, 1976; Ord. 1288 § 1, 1970; prior code § 30.505).

3.44.060 Delinquent payments – Determination – Interest and penalties.

A. Taxes collected from a service user which are not remitted to the city finance officer on or before the due dates provided in this chapter are delinquent.

B. Interest and penalties for delinquency in remittance of any tax collected, or any deficiency determination, shall attach and be paid by the person required to collect and remit at the rates and in the same manner as is provided in this title for delinquency in payment of transient occupancy tax.

C. The city finance officer shall have power to impose additional penalties upon persons required to collect and remit taxes under the provisions of this chapter for fraud and negligence in reporting and remitting, in the same manner and at the same rates as are provided in this title for such penalties upon persons required to pay transient occupancy tax.

D. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be remitted. (Ord. 1288 § 1, 1970; prior code § 30.507).

3.44.070 Actions to collect.

A. Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax not paid by said service user to the person required to collect and remit, although the amount of such tax may have been remitted pursuant to the terms of this chapter, shall be deemed a debt owed by the service user to the city.

B. Any such tax collected from a service user which has not been remitted to the city finance officer shall be deemed a debt owed to the city by the person required to collect and remit.

C. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Ord. 1288 § 1, 1970; prior code § 30.508).

3.44.080 Duty to collect and remit – Billing procedure.

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the same time as, and along with, the charges made in accordance with the regular billing practice. If the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

B. The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this chapter.

Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period. (Ord. 1288 § 1, 1970; prior code § 30.509).

3.44.090 Administration and enforcement.

The City Finance Officer shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter. In administering and enforcing the provisions of this chapter, the City Finance Officer shall have the same powers and duties with respect to collecting provided herein as he has with respect to the collection of the transient occupancy tax, Chapter 3.40 CVMC. (Ord. 1288 § 1, 1970; prior code § 30.510).

3.44.100 Assessment for taxes not remitted – Notice – Hearing – Exceptions.

The City Finance Officer may make an assessment for taxes not remitted by a person required to remit for any reason. The manner of making and providing notice of such assessment, the right to a hearing and the conduct of such hearing, the preparation and service of findings, filing exceptions and passing upon exceptions shall be the same as provided in this title for transient occupancy tax. (Ord. 1288 § 1, 1970; prior code § 30.511).

3.44.110 Recordkeeping duty.

It is the duty of every person required to collect and remit to the City any tax imposed by this chapter to keep and preserve for a period of three years all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and remittance to the city finance officer, which records the City Finance Officer shall have the right to inspect at all reasonable times. (Ord. 1288 § 1, 1970; prior code § 30.512).

3.44.120 Refunds.

A. Whenever the amount of any tax has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the Finance Director under this chapter, it may be refunded as provided in this section.

B. The Finance Director may refund any tax that has been overpaid, paid more than once or erroneously or illegally collected or received by the Finance Director under this chapter; provided, that no refund shall be paid under the provisions of this section unless the claimant or his or her guardian, conservator, executor or administrator has submitted a written claim, under penalty of perjury, to the

Finance Director within one year of the overpayment or erroneous or illegal collection of said tax. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto. Nothing herein shall permit the filing of a refund claim on behalf of a class or group of taxpayers. Where the amount of any individual refund claim is in excess of the amount set by separate resolution of the City Council relating to the settlement of general liability claims against the City, City Council approval shall be required.

C. It is the intent of the City that the one-year written claim requirement of this section be given retroactive effect; provided, however, that any claims which arose prior to the enactment of the one-year claims period of this section, and which are not otherwise barred by a then-applicable statute of limitations or claims procedure, must be filed with the Finance Director as provided in this subsection within 90 days following the effective date of the ordinance codified in this section.

D. The City Manager, or his or her designee, or the City Council where the claim is in excess of \$50,000, shall act upon the refund claim within 45 days of the initial receipt of the refund claim, or, if the claim is amended, within 45 days after the amended claim is presented. Said decision shall be final. If the City Manager/designee/City Council fails or refuses to act on a refund claim within the 45-day period, the claim shall be deemed to have been rejected by the City on the forty-fifth day. The Finance Director shall give notice of the action in a form that substantially complies with that set forth in Government Code Section 913.

E. The filing of a written claim pursuant to Government Code Section 935 is a prerequisite to any suit thereon. Any action brought against the City pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946.

F. Notwithstanding the notice provisions of this section, in the event that a service supplier remits a tax to the City in excess of the amount of tax imposed by this chapter, that supplier may claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the Finance Director, provided such credit is claimed in writing no later than one year from the date of the claimed overpayment. The Finance Director shall first determine the validity of the claim, and the underlying basis for the claim.

G. Notwithstanding the notice provisions of this section, a service supplier that has collected and remitted to the City any amount of tax in

excess of the amount of tax imposed by this chapter and actually due from a service user (whether due to overpayment or erroneous or illegal collection of said tax), may refund such amount to the service user, or credit to charges subsequently payable by the service user to the service supplier, and claim credit for such overpayment against the amount of tax which is due upon any other monthly returns to the City, provided such credit is claimed in a return dated no later than one year from the date of overpayment or erroneous or illegal collection of said tax. The Finance Director shall first determine the validity of the service user's claim of credit, and the underlying basis for such claim. (Ord. 3057 § 1, 2007; Ord. 1288 § 1, 1970; prior code § 30.513).

3.44.130 Disposition of revenues – Utilization.

All revenues collected by the City under this chapter and remaining after payment of the costs incurred in the administration of this chapter shall be deposited in the general fund and the council may, from time to time, by resolution, specifically designate the purpose for which these revenues may be utilized. (Ord. 1288 § 1, 1970; prior code § 30.514).

3.44.140 Effective date – Billing procedure.

The taxes for fiscal year 1978-79 imposed by this chapter shall become operative as of July 1, 1978; provided, however, that the utility companies shall compute and impose the utility users' tax upon said users for the charges set forth in this chapter at the commencement of the billing period for said users arising from and after July 1, 1978 for services provided to said users in accordance with accepted billing practices of said utility companies, so that there will be no need to prorate said utility users' tax. The tax imposed for fiscal years 1979-80 and beyond shall be operative as of July 1, 1979. (Ord. 1803 § 1, 1978; Ord. 1288 § 2, 1970).

3.44.150 Establishment of rate – Public hearing requirements – Power to abate.

Without affecting the maximum amount authorized by this chapter, the City Council sets the utility users' tax rate at .00250 per kilowatt-hour of electricity, .00919 per therm of gas, and five percent for telephone based upon gross receipts. Any change to increase this amount to the maximum authorized or decrease it to any other amount shall be subject to the requirement for a public hearing before the City Council. (Ord. 2423 § 1, 1990; Ord.

2409 § 1, 1990; Ord. 2208 § 1, 1987; Ord. 1803 § 1, 1978; Ord. 1288 § 3, 1970).

3.44.160 Violations deemed infractions.

Any person who willfully attempts in any manner to avoid or defeat the tax imposed by this chapter or the payment of all or any part thereof, or any person required by this chapter to pay the tax, to make a return, to keep any records, or to supply any information who willfully fails to pay all or any part of such tax, make such return, keep such records, or supply such information at the time or times required by this chapter, shall be guilty of an infraction. (Ord. 1803 § 1, 1978).

Chapter 3.45

MASTER FEE SCHEDULE

Sections:

3.45.010 Established – Purpose.

3.45.010 Established – Purpose.

A. The City Council shall adopt, by resolution, a master fee schedule, indicating therein the fees for all services, administrative acts and other legally required fees, which resolution may be amended from time to time and shall be effective upon first reading and approval; provided, however, such resolutions may specify therein their applicability, if any, to applications currently in the process of review.

B. A copy of the master fee schedule shall be maintained in the office of the City Clerk and in each department of the City.

C. The fees set forth in the master fee schedule may be waived by the waiving authority, as defined in subsection (D) of this section, in accordance with the following procedures:

1. Any person requesting an abatement of a fee herein charged shall request said abatement in writing, addressed to the waiving authority, and shall set forth herein, with specificity, the reasons for requesting said abatement of all or any portion of the fees.

2. The waiving authority shall conduct a public hearing, notice of which is not required to be published. Notice of said public hearing shall be given to the applicant and to any party or parties requesting notice of same.

3. Prior to abating all or any portion of a fee established in the master fee schedule, the waiving authority shall find a peculiar economic hardship or other injustice would result to the applicant which outweighs, when balanced against, the need of the City revenue and the need for a uniform method of recovering same from those against whom it is imposed.

D. “Waiving authority,” as the term is used herein, shall mean the City Manager, or his designee, if the amount of such waiver is less than or equal to the greater of (1) \$2,500 or (2) 25 percent of the fee imposed by the master fee schedule. If the amount of the waiver is greater than the greater of \$2,500 or 25 percent of the original fee imposed by the master fee schedule, the “waiving authority,” as used herein, shall mean the City Council.

E. If the waiving authority in a particular fee waiver matter is the City Manager, or his designee,

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the decision of the city manager, or his designee, may be appealed to the city council by any person, including, but not limited to, the members of the city council. If the waiving authority is not the city council, then the waiving authority shall provide notice of his decision to waive the fee set forth in the master fee schedule by distributing a copy of said notice of decision to each member of the city council and to the city clerk. Said notice of decision shall be deemed a public record. (Ord. 2506 § 1, 1992; Ord. 2375 § 1, 1990; Ord. 2373 § 1, 1990; Ord. 2066 § 1, 1984; Ord. 1818 § 1, 1978).

Chapter 3.48

FINANCING OF INDUSTRIAL AND COMMERCIAL DEVELOPMENT

Sections:

- 3.48.010 Findings and determinations.
- 3.48.020 Definitions.
- 3.48.030 Powers.
- 3.48.040 Nonoperation.
- 3.48.050 Applications for financing.
- 3.48.060 Acceptance of applications.
- 3.48.070 Bonds – Authorization.
- 3.48.080 Bonds – Issuance.
- 3.48.090 Bonds – Terms.
- 3.48.100 Trust agreement.
- 3.48.110 Personal liability.
- 3.48.120 Bonds – Refunds.
- 3.48.130 Bonds – Repayment.
- 3.48.140 Authority to assist projects.
- 3.48.150 Financing agreements.
- 3.48.160 Trust funds.
- 3.48.170 Liberal construction.
- 3.48.180 Supplemental and additional powers.
- 3.48.190 Actions to determine validity of bonds and proceedings.
- 3.48.200 Amendment.

3.48.010 Findings and determinations.

The city council finds and determines as follows:

A. The full employment of residents of the city, and the prevention of unemployment and underemployment of such residents, serves a vital and compelling public interest of the city and promotes the public health, safety and welfare of the city by reducing the incidence of crime, improving the mental and physical health and well-being of the city's residents, alleviating the financial drain upon limited public and private resources for welfare programs and unemployment assistance, and enhancing the financial resources of the city.

B. The encouragement of industrial and commercial development within the city serves a vital and compelling public interest of the city and promotes the public health, safety and welfare of the city by increasing the employment of residents of the city, increasing the tax and revenue base and thereby enhancing the financial resources of the city, and preventing physical deterioration and abandonment of industrial and commercial areas within the city. In addition, the city's participation in the financing of such development serves the public interest by ensuring that such development

will reflect the needs and objectives of the community more so than if such development were undertaken without city participation.

C. Basic utilities such as gas, water and electricity are necessities of life, essential to public health, safety and welfare and to industrial and commercial development within the city. City assistance in financing and refinancing improvements to gas and water transmission and distribution systems and electricity generation, transmission and distribution systems throughout the region will reduce the costs of providing such utility service within the city and thereby reduce the rates of providing such rates to be paid by industrial, commercial and residential utility customers within the city. The city's participation in such financing and refinancing also ensures that the city's future gas, water and electricity requirements will be served as regional growth places heavier demands on such services.

D. Encouraging industrial and commercial development and the provision of basic utilities pursuant to this chapter (1) will promote the health, safety and welfare of the city, including those public interests enumerated above, and will improve the social, moral, economic and physical condition of the community thereby, and (2) constitutes a municipal affair of the city, a valid exercise of the police powers of the city, and a public purpose in which the city has a peculiar and unique interest. (Ord. 2669 § 1, 1996; Ord. 2498 § 1, 1992; Ord. 1970 § 1, 1982).

3.48.020 Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

A. "Acquisition" and its variants means acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation.

B. "Administrative expenses" means all reasonable and necessary expenses incurred by the city in the administration of the provisions of this chapter with respect to a particular project and the financing or refinancing thereof, including without limitation compensation to city agents, employees and staff; fees and expenses of paying agents, trustees, bond counsel and financing consultants; and costs of printing and advertising.

C. "Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued either by the city pursuant to this chapter, or by any other legal entity for purposes permitted by this chapter, which obligations are payable exclusively

from revenues and other funds permitted by the applicable law under which such obligations were issued or entered into.

D. "City" means the city of Chula Vista, California, a chartered city in the state existing under and exercising powers pursuant to the city Charter and the Constitution of the state.

E. "City Charter" means the Charter of the city, as amended from time to time.

F. "City council" means the city council of the city.

G. "Costs" means, with reference to a project, any or all of the following costs incurred for the acquisition or financing thereof:

1. Obligations of the participating party incurred for labor and materials in connection with the acquisition of the project;

2. The cost of acquisition of any property, whether real or personal and improved or unimproved, including franchise rights and other intangible property, and any interests therein required for the acquisition of the project;

3. The cost of demolishing, removing or relocating any building or structure, and the cost of making relocation assistance payments required by law;

4. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition or financing of the project;

5. All costs of engineering, legal and consultant services, including the costs of the participating party for surveys, estimates, plans, and specifications and preliminary investigation thereof, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper acquisition of the project;

6. All costs incurred in connection with proceedings by the participating party necessary to comply with the California Environmental Quality Act of 1970, as amended;

7. All amounts required to fund any reserve funds for bonds and any interest on bonds becoming due and payable during a period not exceeding the period of acquisition of the project and 12 months thereafter;

8. All administrative expenses;

9. All costs which the participating party shall be required to pay, under the terms of any contract or contracts, for the acquisition or financing of the project;

10. The refinancing of existing indebtedness secured by an interest in any real property comprising any portion of the project, so long as, and to the

extent that, such refinancing does not cause interest on the bonds to become taxable under Section 103 of the Internal Revenue Code of 1954, as amended;

11. All costs incurred in connection with the refunding of any bonds issued with respect to a project; and

12. Any sums required to reimburse the participating party for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the project.

H. "Exempt organization" means an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

I. "Finance" and its variants, including without limitation refinance and refinancing, means the lending of moneys or any other thing of value, or the purchase of loans or the entering into of leases or installment sale agreements, for the purpose of:

1. Paying or otherwise providing for or assisting the payment of any or all of the costs of a project pursuant to this chapter; or

2. Providing funds to be used as working capital or otherwise for general expenditures of exempt organizations pursuant to this chapter.

J. "Participating party" means any person, corporation, partnership, firm or other entity or group of entities requiring financing for the acquisition or refinancing of a project pursuant to this chapter.

K. "Project" means real property improved with an industrial, commercial or utility structure, including but not limited to real property to be used by an exempt organization in connection with its authorized purposes, and all property in connection therewith or incidental thereto, including all machinery, equipment and furnishings, the acquisition or refinancing of which is financed or otherwise assisted pursuant to this chapter; provided, however, that no project to be financed or refinanced may be located outside the city unless the city council shall find and determine that such project would directly benefit the citizens of the city by substantially promoting one or more of the public interests recited in CVMC 3.48.010. "Project" also includes qualified residential rental property as described in and within the meaning of Section 142(d) of the Internal Revenue Code of 1986, as amended, and regulations and rulings promulgated thereunder, including all property in connection therewith and incidental thereto.

L. "Ordinance" means Ordinance No. 1970, passed and adopted by the city council of the city on February 9, 1982, pursuant to the city Charter as amended from time to time.

M. "Revenue" means, with respect to a project, all amounts received as repayment of principal, interest and all other charges received for, and all other income and revenue (including the proceeds of insurance) derived by, the city in connection with such project, and any receipts derived from the investment of such income or revenue, including moneys deposited in a sinking, redemption or reserve fund or other fund to secure the bonds or to provide for the payment of the principal of or interest on the bonds, and such other moneys as the city council may in its discretion make available therefor.

N. "State" means the state of California. (Ord. 2669 § 1, 1996; Ord. 2550 § 1, 1993; Ord. 2498 § 2, 1992; Ord. 2044 § 1, 1983; Ord. 2040, 1983; Ord. 1970 § 2, 1982).

3.48.030 Powers.

The city is authorized and empowered:

A. To determine the location and character of any project to be financed or refinanced under the provisions of this chapter and to finance or refinance such projects;

B. To issue bonds:

1. For the purpose of financing or otherwise assisting the acquisition of projects authorized by this chapter, or

2. For the purpose of providing funds to be used as working capital or otherwise to finance general expenditures of exempt organizations, or

3. For the purpose of funding or refunding bonds issued by the city or any other legal entity for purposes permitted by this chapter;

C. To fix fees, charges and interest rates for financing any project, and to revise such fees, charges and interest rates from time to time, and to collect interest and principal on any loan made to a participating party together with such fees and charges incurred in such financing, and to contract with any person, partnership, association, corporation or public agency with respect thereto;

D. To hold deeds of trust as security for financing any project and to pledge the same as security for repayment of bonds issued therefor;

E. To establish the terms and conditions for the financing of any project undertaken pursuant to this chapter;

F. To require that the full amount owed on any loan for the financing of a project pursuant to this chapter shall be due and payable upon sale or other transfer of ownership of such project;

G. To acquire by deed, purchase, lease, contract, gift, devise or otherwise any real or personal

property, structures, rights, rights-of-way, franchises, easements, mortgages and other interests in property located within the state necessary or convenient for the financing or acquisition of a project, upon such terms and conditions as it deems advisable and to lease, sell or dispose of the same in such manner as may be necessary or desirable to carry out the objects and purposes of this chapter. Notwithstanding the foregoing, nothing in this chapter is intended or shall be construed in any way to authorize any exercise of the power of eminent domain with respect to any project;

H. To employ or contract for such engineering, architectural, accounting, collection, economic feasibility or other services in connection with the servicing of loans made to participating parties, as may be necessary in the judgment of the city council for the successful financing of a project. The city may pay the reasonable costs of consulting engineers, architects, accountants, construction experts and economic feasibility experts, if, in the judgment of the city council, such services are necessary to the successful financing of a project and if the city is not able to provide such services. The city may employ, contract for, and fix the compensation of financing consultants, bond counsel and other advisors, as may be necessary in its judgment to provide for the issuance and sale of bonds;

I. In addition to all other powers specifically granted in this chapter, to do all things necessary or convenient to carry out the purposes of this chapter. (Ord. 2669 § 1, 1996; Ord. 2044 § 2, 1983; Ord. 1970 § 3, 1982).

3.48.040 Nonoperation.

The city shall not have the power to operate any project as a business. The city shall take no more action with respect to any project than is necessary to promote the public interests of the city recited in CVMC 3.48.010. (Ord. 1970 § 4, 1982).

3.48.050 Applications for financing.

Participating parties may apply for financing pursuant to this chapter by contacting the community development director or other officer or employee of the city designated by the community development director. Each applicant shall supply to the satisfaction of the community development director or such officer or employee all information required to evaluate the financial reliability and stability of the participating party and the feasibility of the proposed project, including an estimate of the maximum amount of financing to be required, a description or itemization of the costs of the proposed

project, and a written agreement to pay all administrative expenses for the proposed project. The provisions of this section shall not apply to any financing approved by resolution of the city council adopted prior to the date of adoption of the ordinance codified in this chapter. (Ord. 1970 § 5, 1982).

3.48.060 Acceptance of applications.

Upon receipt of an application containing all required information, agreements and undertakings, the city council shall at such time as it deems convenient review such application and any staff recommendations with respect thereto. If the city council chooses to approve any application for financing under this chapter, it shall adopt a resolution authorizing the issuance of bonds and/or accepting and approving such application and the participation of the city in the financing of such project, subject to the provisions of this chapter and the conclusion of all proceedings undertaken to consummate such financing to the satisfaction of the city. The provisions of this section shall not apply to any financing approved by resolution of the city council adopted prior to the date of adoption of the ordinance codified in this chapter. (Ord. 1970 § 6, 1982).

3.48.070 Bonds – Authorization.

The city may issue its bonds for the purpose of financing or otherwise assisting the acquisition of projects authorized by this chapter. Every issue of bonds shall be a special obligation of the city, payable solely from all or any part of the revenues of projects. (Ord. 1970 § 7, 1982).

3.48.080 Bonds – Issuance.

The bonds may be issued as serial bonds or as term bonds, or the city council, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the city council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places, and be subject to such terms of redemption as the resolution or resolutions of the city council may provide. The bonds may be sold at either a public or private sale and for such prices as the city council shall determine. Pending preparation of the definitive bonds, the city may issue

interim receipts, certificates, or temporary bonds, which shall be exchanged for such definitive bonds. (Ord. 1970 § 8, 1982).

3.48.090 Bonds – Terms.

Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the holders of the bonds:

A. The pledge of all or any part of the revenues, subject to such agreements with bondholders as may then exist;

B. The interest and principal to be received and other charges to be charged and the amounts to be raised each year thereby, and the use and disposition of the revenues;

C. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

D. Limitations on the purposes to which the proceeds of a sale of any issue of bonds, then or thereafter issued, may be applied, and pledging such proceeds to secure the payment of the bonds or any issue of bonds;

E. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

F. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

G. Specification of the acts or omissions to act which shall constitute a default in the duties of the city to holders of its obligations, and providing the rights and remedies of such holders in the event of default;

H. The mortgaging of land, improvements, or other assets owned by a participating party for the purpose of securing the bondholders;

I. Such other terms and conditions pertaining to the issuance of the bonds as are deemed advisable by the city council. (Ord. 1970 § 9, 1982).

3.48.100 Trust agreement.

In the discretion of the city council, any bonds issued under the provisions of this chapter may be secured by a trust agreement or indenture by and between the city and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or indenture may pledge or assign the revenues to be received or pro-

ceeds of any contract or contracts pledge, and may convey or mortgage any property. Such trust agreement or indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders, as may be reasonable and proper and not in violation of law, including such provisions as may be included in any resolution or resolutions of the city council authorizing the issuance of bonds pursuant to CVMC 3.48.030(B). Any bank or trust company doing business under the laws of the state which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnity bonds or pledge such securities as may be required by the city. Any such trust agreement or indenture may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or indenture may contain such other provisions as the city council may deem reasonable and proper for the security of the bondholders. (Ord. 1970 § 10, 1982).

3.48.110 Personal liability.

Neither the members of the city council nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. (Ord. 1970 § 11, 1982).

3.48.120 Bonds – Refunds.

The city council may provide for the issuance of bonds, any portion of which is to be used for the purpose of refunding outstanding bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of bonds issued to refund any outstanding bonds may, in the discretion of the city council, be applied to the retirement of such outstanding bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding bonds prior to maturity, upon such terms, and subject to such conditions, as the city council shall deem advisable. (Ord. 1970 § 12, 1982).

3.48.130 Bonds – Repayment.

Revenues shall be the sole source of funds pledged by the city for repayment of bonds issued hereunder. Bonds issued hereunder shall not be deemed to constitute a debt or liability of the city or a pledge of the faith and credit of the city, but shall be payable solely from revenues. All bonds shall contain on the face thereof a statement to the following effect:

Neither the faith and credit nor the taxing power of the City of Chula Vista is pledged to the payment of the principal of or interest on this bond.

The issuance of bonds shall not directly, indirectly or contingently obligate the city council to levy or pledge any form of taxation or to make any appropriation for their payment. (Ord. 1970 § 13, 1982).

3.48.140 Authority to assist projects.

The city may provide financing to any participating party for, or otherwise assist the acquisition of, duly approved projects pursuant to this chapter. At the discretion of the city council, the financial assistance provided hereunder may take any form deemed advisable for the successful financing of the project, including, without limitation, in the form of a loan, lease or installment sale. (Ord. 1970 § 14, 1982).

3.48.150 Financing agreements.

The city may enter into agreements with any participating party with respect to the financing of a project, which agreements may provide that the architectural and engineering design of the project shall be subject to such standards as may be established by the city and that the acquisition of the project shall be subject to such supervision as the city deems necessary. The terms and conditions of such agreements may be as mutually agreed upon, but shall not be inconsistent with the provisions of this chapter. Any such agreement may provide the means or methods by which any mortgage taken by the city shall be discharged, and it may contain a covenant by the participating party to complete the project whether or not bond proceeds are sufficient therefor, and such other terms and conditions as the city may require. The city is authorized to fix, revise, charge, and collect interest and principal and all other rates, fees, rents, installment purchase payments and charges with respect to the financing of a project. Such rates, fees, rents, installment purchase payments, charges, and interest shall be fixed and adjusted so that the aggregate thereof will provide funds sufficient with other revenues and moneys, which it is anticipated will be available therefor, if any, to do all of the following:

A. Pay the principal of and interest on outstanding bonds issued to finance such project, as the same shall become due and payable;

B. Create and maintain reserves required or provided for in any resolution authorizing such

bonds. A sufficient amount of the revenues derived from the project may be set aside at such regular intervals as may be provided by the resolution or trust agreement in a sinking or other similar fund, which shall be pledged to, and charged with, the payment of the principal of and interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time the pledge is made. The rates, fees, interest and other charges, revenues, or moneys so pledged and thereafter received by the city shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding, as against all parties having claims of any kind in tort, contract, or otherwise against the city, irrespective of whether such parties have notice thereof. Neither the resolution, the trust agreement, nor any agreement by which a pledge is created need be filed or recorded except in the records of the city. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution or trust agreement authorizing the issuance of such bonds;

C. Pay administrative expenses to the extent not paid from bond proceeds. (Ord. 1970 § 15, 1982).

3.48.160 Trust funds.

All moneys received pursuant to the provisions of this chapter, whether proceeds from the sale of bonds or revenues, shall be deemed to be trust funds to be held and applied solely for the purposes of this chapter. Any bank or trust company in which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes specified in this chapter, subject to the terms of the resolution or trust agreement authorizing the bonds. (Ord. 1970 § 16, 1982).

3.48.170 Liberal construction.

This chapter, being necessary for the health, welfare and safety of the city and its residents, shall be liberally construed to effect its purposes. Furthermore, the city council declares that this chapter is an exercise of the power granted to the city by the city Charter and the Constitution of the state and is an exercise by the city of its powers as to municipal affairs and its police powers, and this chapter shall be liberally construed to uphold its validity under the laws of the state. (Ord. 1970 § 17, 1982).

3.48.180 Supplemental and additional powers.

This chapter shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. (Ord. 1970 § 18, 1982).

3.48.190 Actions to determine validity of bonds and proceedings.

An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the legality and validity of all proceedings previously taken and proposed to be taken for the authorization, issuance, sale, and delivery of the bonds and for the payment of the principal thereof and interest thereon. (Ord. 1970 § 19, 1982).

3.48.200 Amendment.

This chapter shall not be amended so as to have a material, adverse effect upon the rights of the holders of any outstanding bonds theretofore issued hereunder, or the rights of participating parties with respect to whom projects have theretofore been financed hereunder, without written consent of such bondholders and participating parties; provided, however, that this chapter may be amended at any time:

A. To make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained, as the City may deem necessary or desirable; or

B. If such amendment does not materially impair or adversely affect the interests of any such bondholder or participating party in the opinion of the City Council; or

C. If such amendments apply solely to bonds not theretofore issued hereunder or participating parties with respect to whom projects have not theretofore been financed hereunder. (Ord. 1970 § 20, 1982).

Chapter 3.50

DEVELOPMENT IMPACT FEES TO PAY FOR VARIOUS PUBLIC FACILITIES*

Sections:

- 3.50.010 General intent.
- 3.50.020 Definitions.
- 3.50.030 Public facilities to be financed by the fee.
- 3.50.040 Territory to which fee applicable.
- 3.50.050 Establishment of fee.
- 3.50.060 Determination of fees by land use category.
- 3.50.070 Time to determine amount due.
- 3.50.080 Purpose and use of fee.
- 3.50.090 Amount of fee.
- 3.50.100 Development projects exempt from the fee.
- 3.50.110 Authority for accounting and expenditures.
- 3.50.120 Findings.
- 3.50.130 Fee additional to other fees and charges.
- 3.50.135 Mandatory oversizing of facility – Duty to tender reimbursement offer.
- 3.50.140 Developer construction of facilities.
- 3.50.150 Procedure for issuance of credits or tender of reimbursement offer.
- 3.50.155 Developer transfer of credits.
- 3.50.160 Procedure for fee modification or reduction.
- 3.50.170 Fund loans.
- 3.50.180 Effective date.

* Prior legislation: Ords. 2320, 2432, 2554, 2810, 2855, 2887 and 3010.

3.50.010 General intent.

The City's general plan land use and public facilities elements require that adequate public facilities be available to accommodate increased population created by new development within the City of Chula Vista.

The City Council of the City of Chula Vista has determined that new development will create adverse impacts on the City's existing public facilities which must be mitigated by the financing and construction of certain public facilities which are the subject of this chapter. New development contributes to the cumulative burden on these public facilities in direct relationship to the amount of population generated by the development or the

gross acreage of the commercial or industrial land in the development.

The City Council of the City of Chula Vista has determined that a reasonable means of financing the public facilities is to charge a fee on all developments in the City of Chula Vista. Imposition of the public facilities development impact fee on all new development for which building permits have not yet been issued is necessary in order to protect the public safety and welfare, thereby ensuring effective implementation of the City's general plan. (Ord. 3050 § 2, 2006).

3.50.020 Definitions.

For the purposes of this chapter, the following words or phrases shall be construed as defined in this section, unless from the context it appears that a different meaning is intended:

A. "Building permit" means a permit required by and issued pursuant to the Uniform Building Code, as adopted by reference by this City.

B. "Developer" means the owner or developer of a development.

C. "Development permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the City.

D. "Development project" or "development" means any activity described as the following:

1. Any new residential dwelling unit developed on vacant land;
2. Any new commercial/office or industrial development constructed on vacant land;
3. Any expansions to established developments or new developments on nonvacant land in those land use categories listed in subsections (D)(1) and (2) of this section, if the result is a net increase in dwelling units. The fee shall be based solely on this net dwelling unit increase;
4. Any new or expanding special land use project;
5. Any special purpose project developed on vacant land or nonvacant land, or expanded within a pre-existing site, if the result is a net increase in dwelling units. The fee shall be based solely on this net dwelling unit increase;
6. Any other development project not listed above but described in Sections 65927 and 65928 of the State Government Code.

E. "Community purpose facility" means a facility which serves one of the following purposes:

1. Social service activities, including such services as Boy Scouts and Girl Scouts, Boys and

Girls Club, Alcoholics Anonymous and services for the homeless;

2. Public schools;
3. Private schools;
4. Day care;
5. Senior care and recreation;
6. Worship, spiritual growth and development.

F. "Special land use" means any nonresidential, noncommercial/office or nonindustrial development project (e.g., Olympic Training Center, hospitals, utilities), or non-special purpose project.

G. "Special purpose project" means any for-profit community purpose facility (e.g., day care).

H. "Engineer report" refers to the April 20, 1993, "development impact fees for public facilities" report.

I. "Extraordinary project cost increases" means increases resulting from costs that could not have been reasonably foreseen at the time a project budget was established.

J. "Extraordinary dwelling unit change" means an increase or decrease in the number of remaining planned residential dwelling units or commercial/industrial acres for which building permits have not yet been pulled, which changes the existing total by more than 2,000 dwelling units or 200 commercial/industrial acres. (Ord. 3050 § 2, 2006).

3.50.030 Public facilities to be financed by the fee.

A. The public facilities ("facilities"), which are the subject matter of the fee, include buildings, equipment and related one-time start-up costs or portions thereof, as detailed in subsection (C) of this section and in the engineer's report on file in the office of the City Clerk.

B. The City Council of the City of Chula Vista may modify or amend this list of facilities by written resolution in order to maintain compliance with the City's general plan or the capital improvement program.

C. The facilities are as follows:

1. Civic Center expansion;
2. Police department facilities and equipment;
3. Corporation yard relocation/expansion;
4. Library system expansion;
5. Fire suppression system expansion;
- 6.** Geographic information system expansion;
- 7.** Computer system expansion;
- 8.** Telecommunication system expansion;

- 9.** Records management system expansion;
- 10. Major recreation facilities (community centers, gymnasiums, swimming pools).

** Facility projects are complete. No future projects will be added.

(Ord. 3050 § 2, 2006).

3.50.040 Territory to which fee applicable.

The area of the City of Chula Vista to which the fee herein established shall be applicable shall be the territorial limits of the City of Chula Vista (“territory”), as they may from time to time be amended. (Ord. 3050 § 2, 2006).

3.50.050 Establishment of fee.

A development impact fee (“fee”) is hereby established to pay for the facilities within the territory. The fee shall be paid upon the issuance of building permits for each development project within the City of Chula Vista, except that, at the discretion of the City Manager, a developer may prepay all or part of civic center expansion fees that

would be applicable to the developer’s future development projects. Prepayment would occur at the then current rate; however, the developer has sole responsibility for paying subsequent fee increases resulting from (1) extraordinary project cost increases, or (2) normal annual adjustments in the Consumer Price Index (CPI) or Building Construction Index (BCI), or (3) extraordinary dwelling unit changes. (Ord. 3050 § 2, 2006).

3.50.060 Determination of fees by land use category.

For purposes of this fee, single-family dwelling units shall include single-family detached homes and detached condominiums; multifamily dwelling units shall include attached condominiums, townhouses, duplexes, triplexes, and apartments. Commercial/office and industrial development projects shall be charged on a per acre basis. Development impact fees for single-family, multifamily, commercial and industrial land uses shall be based on the demand for service generated by that land use, for each public facility set forth in CVMC 3.50.030:

Public Facility	Service Demand Generated by Land Use			
	Single-Family Dwelling Unit	Multifamily Dwelling Unit	Commercial Acre	Industrial Acre
Police department facilities and equipment	.150	.747	.075	.028
Corporation yard relocation/expansion	.125	.465	.228	.182
Library system expansion (residential only)	.178	.822	.000	.000
Fire suppression system expansion	.212	.707	.060	.020
Major recreation facilities (residential only)	.178	.822	.000	.000
General Government				
Civic Center expansion	.169	.742	.058	.031
Administration	.169	.742	.058	.031

The rate for each special land use development project, as defined in CVMC 3.50.020, shall be equivalent to the commercial/office rate per gross acre of land. The Olympic Training Center shall be equivalent to the industrial rate per gross acre of land. The rate for each special purpose project, as defined in CVMC 3.50.020, shall be equivalent to one-half the commercial/office rate per gross acre of land. The charges shall be those outlined in CVMC 3.50.090(C). The fee multiplied by the total number of dwelling units or acres within a given development project represents a developer's fair share ("fair share") for that development project. (Ord. 3050 § 2, 2006).

3.50.070 Time to determine amount due.

The fee for each development shall be calculated at the time of building permit issuance and shall be the amount as indicated at that time, and not when the tentative map or final map was granted or applied for, or when the building permit plan check was conducted, or when application was made for the building permit, except that a developer of a development project providing low- and/or moderate-income housing in accordance with Section III, Objective 1 of the 1991 housing element of the general plan may request authorization to prepay or defer the fee for up to 500 equivalent dwelling units (EDUs) and said request may be approved at the sole discretion of the City Manager. In order to facilitate those low- and/or moderate-income projects which are planned for construction through March 24, 2005, the fee for said projects shall be the fee existing as of March 25, 2002. (Ord. 3050 § 2, 2006).

3.50.080 Purpose and use of fee.

The fee collected shall be used by the city for the following purposes, in such order and at such time as determined by the City Council:

A. To pay for such of the facilities that the City Council determines should be constructed, installed or purchased at that time, or to reimburse the City for facilities funded by the City from other sources.

B. To reimburse developers who have been required or permitted by CVMC 3.50.140(A) to construct, install or purchase approved facilities listed in CVMC 3.50.030(C), in such amounts as the Council deems appropriate.

C. To repay any and all persons who have, pursuant to prior fee Ordinance Nos. 2320 or 2432, or pursuant to this chapter, advanced or otherwise

loaned funds for the construction of a facility identified herein.

D. To repay the City for administration costs associated with administration of the fee. (Ord. 3050 § 2, 2006).

3.50.090 Amount of fee.

A. The fee shall be the amounts set forth in subsections (B) and (C) of this section. The fee shall be adjusted, starting on October 1, 2005, and on each October 1st thereafter, based on the following two indexes:

For the civic center expansion, libraries, fire suppression and major recreation facilities: the Engineering News Record, Building Construction Cost Index for the Los Angeles Area.

For the police, corporation yard, geographic information systems, computer systems, telecommunications systems, records management and administration components: The U.S. Department of Labor, Bureau of Labor Statistics (San Diego Metropolitan Statistical Area).

Adjustments of the fee based upon annual changes to these two indexes shall be automatic and shall not require further action by the City Council. The PFDIF may also be reviewed and amended by the City Council as necessary based on changes in the type, size, location or cost of the facilities to be financed by the fee; changes in land use designation in the City's general plan; and upon other sound engineering, financing and planning information. Adjustments to the fee resulting from these discretionary reviews may be made by resolution amending this section.

B. The fee shall have portions which are, according to the engineer's report, allocated to a specific facility ("fee components"), which correspond to the costs of the various facilities, plus the administration cost for the fee.

C. The fee shall be the following, depending on the land use:

Land Use	Fee
Residential – Single-family dwellings	\$7,891/DU
Residential – Multifamily dwellings	\$7,477/DU
Commercial/Office	\$25,181/acre
Industrial	\$7,958/acre
Special land use	\$25,181/acre

Land Use	Fee
Olympic Training Center	\$7,958/acre
Public purpose	Exempt
Nonprofit community purpose facility	Exempt
Special purpose project	\$12,590/acre

(Ord. 3050 § 2, 2006).

3.50.100 Development projects exempt from the fee.

A. Development projects by public agencies shall be exempt from the provisions of the fee if those projects are designed to provide the public service for which the agency is charged (“public purpose”).

B. Community purpose facilities which are not operated for profit (“nonprofit community purpose facilities”) are also exempt inasmuch as these institutions provide benefit to the community as a whole, including all land use categories which are the subject matter of the fee. The City Council hereby determines that it is appropriate to spread any impact such nonprofit community purpose facilities might have to the other land use categories subject to the fee. In the event that a court determines that the exemption herein extended to community purpose facilities shall for any reason be invalid, the City Council hereby allocates the nonprofit community purpose facilities’ fair share to the City of Chula Vista and not to any of the land use categories which are the subject matter of the development impact land use categories.

C. Development projects which are additions or expansions to existing dwelling units or businesses, except special land use projects, shall be exempt if the addition or expansion does not result in a net increase in dwelling units or commercial/industrial acreage. (Ord. 3050 § 2, 2006).

3.50.110 Authority for accounting and expenditures.

A. Fees Collected Before the Effective Date of the Ordinance Codified in This Chapter.

1. All fees which have accrued shall remain in separate accounts (“accounts”) corresponding to the facilities listed in CVMC 3.50.030, as established by the Director of Finance, and shall only be expended for the purposes associated with each facility account.

2. The Director of Finance is authorized to maintain accounts for the various facilities identified in this chapter and to periodically make expenditures from the accounts for the purposes set forth herein.

B. Funds Collected On or After the Effective Date of the Ordinance Codified in This Chapter.

1. The fees collected shall be deposited into a public facility financing fund (“public facilities development impact fee fund,” or alternatively herein “fund”), which is hereby created and shall be expended only for the purposes set forth in this chapter.

2. The Director of Finance is authorized to establish a single fund for the various facilities identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein. (Ord. 3050 § 2, 2006).

3.50.120 Findings.

The City Council finds that collection of the fee established by this chapter at the time of the building permit issuance is necessary to provide funds for the facilities and to ensure certainty in the capital facilities budgeting for growth-impacted public facilities. (Ord. 3050 § 2, 2006).

3.50.130 Fee additional to other fees and charges.

This fee is in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or developments. (Ord. 3050 § 2, 2006).

3.50.135 Mandatory oversizing of facility – Duty to tender reimbursement offer.

Whenever a developer of a development project is required as a condition of approval of a development permit to cause a facility or a portion of a facility to be built to accommodate the demands created by the development project, the City may require the developer to install, purchase or construct the facility according to design specifications approved by the City, that being with such supplemental size or capacity required by the City (“oversized capacity requirement”). If such an oversized capacity requirement is imposed, the City shall offer to reimburse the developer from the fund either in cash or over time, with interest at the fair market value of money, as fees are collected, at the option of the City, for costs incurred by the developer for the design and construction of the

facility, not to exceed the estimated cost of that particular facility as included in the calculation and updating of the fee. The City may update the fee calculation as the City deems appropriate prior to making such offer. This duty to offer reimbursement shall be independent of the developer's obligation to pay the fee. (Ord. 3050 § 2, 2006).

3.50.140 Developer construction of facilities.

A. Whenever a developer of a development project would be required by application of City law or policy as a condition of approval of a development permit to construct or finance a facility, or if a developer proposes to design and construct a portion of a facility in conjunction with the prosecution of a development project within the territory, and follows the procedure for doing same hereinbelow set forth, the City Council shall, in the following applicable circumstances, tender only the credit or reimbursement hereinbelow identified for that circumstance:

1. If the cost of the facility, incurred by the developer and acceptable to the City, is less than or equal to that portion of the developer's fair share related to the fee component for that facility, the City may only give a credit ("developer credit") against that portion of the developer's fair share related to the fee component for that facility ("fair share of the fee component"); or

2. If the cost of the facility, incurred by the developer and acceptable to the City, is greater than that portion of the developer's fair share related to the fee component for that facility, but less than or equal to the developer's total fair share, the City may give a credit, which credit shall first be applied against that portion of the fair share related to the fee component for that facility, and the excess costs for the facility shall then be applied as credits against such other fee components of the developer's total fair share as the City Manager, in his sole and unfettered discretion, shall determine; or

3. If the cost of the facility, incurred by the developer and acceptable to the City, is greater than the developer's total fair share, the City may give a credit against the developer's total fair share as the City Manager, in his sole and unfettered discretion, shall determine; and/or the City may tender to the developer a reimbursement agreement to reimburse said developer only from the fund as moneys are available, over time, with interest at the fair market value of money, at the option of the City.

B. Unless otherwise stated herein, all developer credits shall be calculated on a dollar basis and

converted into dwelling units at the time building permits are pulled, based on the then-current fee. (Ord. 3050 § 2, 2006).

3.50.150 Procedure for issuance of credits or tender of reimbursement offer.

The City's extension of credits or tender of a reimbursement offer to a developer pursuant to CVMC 3.50.140 shall be conditioned on the developer complying with the terms and conditions of this section:

A. Written authorization shall be requested by the developer from the City and issued by the City Council by written resolution before developer may incur any costs eligible for reimbursement relating to the facility.

B. The request for authorization shall contain the information listed in this section and such other information as may from time to time be requested by the City.

C. If the Council grants authorization, it shall be by written agreement with the developer, and on the following conditions among such other conditions as the Council may from time to time impose:

1. Developer shall prepare all plans and specifications and submit same for approval by the City;

2. Developer shall secure and dedicate any right-of-way required for the facilities;

3. Developer shall secure all required permits and environmental clearances necessary for construction of the facilities;

4. Developer shall provide performance bonds in a form and amount and with a surety satisfactory to the City (where the developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the value of the project);

5. Developer shall pay all City fees and costs;

6. The City shall be held harmless and indemnified, and upon tender by the City, defended by the developer for any of the costs and liabilities associated with the construction of the facilities;

7. The City will not be responsible for any of the costs of constructing the facilities. The developer shall advance all necessary funds to construct the facilities;

8. The developer shall secure at least three qualified bids for work to be done. The construction contract shall be granted to the lowest qualified bidder. If qualified, the developer may agree to perform the work at a price equal to or less than the low bid. Any claims for additional payment for

extra work or charges during construction shall be justified and shall be documented to the satisfaction of the Director of Public Works;

9. The developer shall provide a detailed cost estimate which itemizes those costs of the construction attributable to the facilities and exclude any work attributable to a specific subdivision project. The estimate is preliminary and subject to final determination by the Director of Public Works upon completion of the facilities;

10. The City may grant partial credit for costs incurred by the developer on the facility upon determination of satisfactory incremental completion of the facility, as approved and certified by the Director of Public Works, in an amount not to exceed 75 percent of the cost of the construction completed to the time the partial credit is granted, thereby retaining 25 percent of such credits until issuance by the City of a notice of completion;

11. When all work has been completed to the satisfaction of the City, the developer shall submit verification of payments made for the construction of the facility to the City. The Director of Public Works shall make the final determination on expenditures which are eligible for credit or reimbursement. (Ord. 3050 § 2, 2006).

3.50.155 Developer transfer of credits.

A developer who, in accordance with the provisions of CVMC 3.50.140 and 3.50.150, receives credits against future payments of the fee for one or more fee components may transfer those credits as provided herein to another developer.

A. The developer shall provide the City with written notice of such transfer within 30 days. The notice shall provide the following information:

1. The name of the developer to whom the credits were transferred;
2. The dollar value of the transferred credits;
3. The fee component(s) against which the credits will be applied; and
4. The projected rate, by fiscal year, that the credits will be applied, until said credits have been fully redeemed.

B. Credits received by a developer of a low- and/or moderate-income project in accordance with CVMC 3.50.070 can only be transferred to another low- and/or moderate-income development project. (Ord. 3050 § 2, 2006).

3.50.160 Procedure for fee modification or reduction.

Any developer who, because of the nature or type of uses proposed for a development project,

contends that application of this fee is unconstitutional or unrelated to mitigation of the burdens of the development may apply to the City Council for a modification or reduction of the fee. The application shall be made in writing and filed with the City Clerk not later than 10 days after notice of the public hearing on the development permit application for the project is given, or if no development permit is required, at the time of the filing of the building permit application. The application shall state in detail the factual basis for the claim of modification or reduction. The City Council shall make reasonable efforts to consider the application within 60 days after its filing. The decision of the City Council shall be final. If a reduction or modification is granted, any change in use within the project shall subject the developer to payment of the fee. The procedure provided by this section is additional to any other procedure authorized by law for protection or challenging this fee. (Ord. 3050 § 2, 2006).

3.50.170 Fund loans.

A. Loans by the City. The City may loan funds to the fund to pay for facilities should the fund have insufficient funds to cover the cost of said facility. Said loans, if granted, shall be approved upon the adoption of the annual City budget and shall carry interest rates as set by the City Council for each fiscal year. A schedule for repayment of said loans shall be established at the time they are made and approved by the Council, with a maximum term not to exceed the life of the fund.

B. Developer Loans. A developer may loan funds to the City as outlined in CVMC 3.50.140 and 3.50.150. The City may repay said developer loans with interest, under the terms listed in subsection (A) of this section. (Ord. 3050 § 2, 2006).

3.50.180 Effective date.

This chapter shall become effective January 6, 2007. (Ord. 3050 § 2, 2006).

Chapter 3.54

**TRANSPORTATION DEVELOPMENT
IMPACT FEE**

Sections:

- 3.54.010 Establishment of fee.
- 3.54.020 Definitions.
- 3.54.030 Transportation facilities to be financed by the fee.
- 3.54.040 Developer construction of transportation facilities.
- 3.54.050 Procedure for fee waiver or reduction.
- 3.54.060 Payment of DIF program support.
- 3.54.070 Exemptions.
- 3.54.080 Assessment districts.
- 3.54.090 Economic incentive credit.

3.54.010 Establishment of fee.

A. A development impact fee in the amounts set forth in subsection (C) of this section is hereby established to pay for transportation improvements and facilities within the Eastern Territories of the City. The fee shall be paid before the issuance of building permits for each development project within the Eastern Territories of the City. No building permit shall be issued unless the development

impact fee is paid. The fees shall be deposited into an Eastern Territories transportation facilities fund, which is hereby created, and shall be expended only for the purposes set forth in this chapter. The Director of Finance is authorized to establish various accounts within the fund for the various improvements and facilities identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein in accordance with the facilities phasing plan or capital improvement plan adopted by the City Council. The City Council finds that collection of the fees established by this chapter at the time of the building permit is necessary to ensure that funds will be available for the construction of facilities concurrent with the need for those facilities and to ensure certainty in the capital facilities budgeting for the Eastern Territories.

B. The fee established by this section is in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or developments.

C. The amount of the fee for each development shall be calculated at the time of building permit issuance based upon the following schedule:

Land Use Classification		TDIF Rate	
Residential (Low)	0 – 6 dwelling units per gross acre	\$10,050	per DU
Residential (Med.)	6.1 – 18 dwelling units per gross acre	\$8,040	per DU
Residential (High)	>18.1 dwelling units per gross acre	\$6,030	per DU
Senior housing		\$4,020	per DU
Residential mixed use	>18 dwelling units per gross acre	\$4,020	per DU
Commercial mixed use		\$160,800	per 20,000 sq. ft.
General commercial (acre)	< 5 stories in height	\$160,800	per acre
Regional commercial (acre)	> 60 acres or 800,000 sq. ft.	\$110,550	per acre
High rise commercial (acre)	> 5 stories in height	\$281,400	per acre
Office (acre)	< 5 stories in height	\$ 90,450	per acre
Industrial RTP (acre)		\$ 80,400	per acre
18-hole golf course		\$703,500	per course
Medical center		\$653,250	per acre

The density of the development type shall be based on the number of dwelling units per gross acre for single-family or multifamily residential and shall be based upon the densities identified on the approved tentative map or approved tentative parcel map entitling the development unless otherwise approved in writing by the City Manager's

designee. Gross acreage as it applies to the commercial, high rise commercial, industrial and office development types, means all land area that the City Manager's designee deems necessary within the boundary of the parcel or parcels of the development project for which building permits are being requested.

The amount of the fee shall be adjusted, starting on October 1, 2005, and on each October 1st thereafter, based on the one-year change (from July to July) in the Los Angeles Construction Cost Index as published monthly in the Engineering News Record. For reference purposes, this update is based on the July 2004, Los Angeles Construction Cost Index of 7845.85. Adjustments to the above fees based upon the Construction Cost Index shall be automatic and shall not require further action of the city council.

The city council may adjust the amount of the fee as necessary to reflect changes in the type, size, location or cost of the transportation facilities to be financed by the fee, changes in land use designations in the city's general plan, and upon other sound engineering, financing and planning information. Adjustments to the above fees resulting from the above reviews may be made by resolution amending the master fee schedule.

D. The fees collected shall be used by the city for the following purposes as determined by the city council:

1. To pay for the construction of facilities by the city, or to reimburse the city for facilities installed by the city with funds from other sources.

2. To reimburse developers who have been required by CVMC 3.54.040(A) to install improvements that are major streets and are listed in CVMC 3.54.030.

3. To reimburse developers who have been permitted to install improvements pursuant to CVMC 3.54.040(B). (Ord. 3029 § 2, 2005; Ord. 2866 § 2, 2002; Ord. 2802 § 3, 1999).

3.54.020 Definitions.

For the purposes of this chapter, the following words or phrases shall be construed as defined herein, unless from the context it appears that a different meaning is intended.

A. "Building permit" means a permit required by and issued pursuant to the Uniform Building Code.

B. "City engineer" means the city engineer, the city engineer's designee or the city manager's designee.

C. "Density" means dwelling units per gross acre identified for each planning area shown on the approved tentative map or approved tentative parcel map or as determined by the city manager's designee.

D. "Developer" means the owner or developer of a development.

E. "Development permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the city.

F. "Development project" or "development" means any activity described in Section 66000 of the State Government Code.

G. "Eastern Territories" generally means that area of the city located between Interstate 805 on the west, the city sphere of influence boundary on the east and northeast, the city boundary on the north and the city's southern boundary on the south, excepting Villages 9 and 10 of the Otay Ranch (the University Site) as shown on the map entitled "Figure I" of the update of the financial and engineering studies.

H. "Financial and engineering studies" means the "Interim Eastern Area Development Impact Fee for Streets" study prepared by George T. Simpson and Willdan Associates dated November 1987; the "Eastern Area Development Fee for Streets" study prepared by Willdan Associates dated November 19, 1990; the Eastern Development Impact Fee for Streets - 1993 Revision" study prepared by city staff dated July 13, 1993; and the study prepared by Project Design Consultants ("Eastern Area Development Impact Fees for Streets, 1999 Update") dated October 25, 1999; and the study prepared by Willdan ("Eastern Area Development Impact Fees for Streets" dated July 2002); and the study prepared by city staff ("Eastern Area Transportation Development Impact Fees" dated March 2005) which are on file in the office of the city clerk.

I. "High rise commercial" means commercial office usage five or more stories in height.

J. "Transportation facility project" means that project or portion of project, which involves the specified improvements authorized by CVMC 3.54.030.

K. "Regional commercial" means any large commercial shopping center, larger than 60 acres, and containing more than 800,000 square feet of commercial space.

L. "Mixed use residential" means residential units constructed above a commercial space.

M. "Mixed use commercial" means a commercial project with residential units located on second floor, or higher, above the commercial space. (Ord. 3029 § 3, 2005; Ord. 2866 § 3, 2002; Ord. 2802 § 3, 1999).

3.54.030 Transportation facilities to be financed by the fee.

A. The transportation facilities and programs to be financed by the fee established by this chapter are:

3.** Telegraph Canyon Road from Paseo Del Rey to east of Paseo Ladera north side.

3a.** Telegraph Canyon Road/I-805 interchange, Phase II.

3b. Telegraph Canyon Road from I-805 interchange to 200 feet east of Telegraph Canyon Shopping Center.

4.** Telegraph Canyon Road, Phase I: Rutgers Avenue to Eastlake Boundary.

5.** Telegraph Canyon Road, Phase II: Paseo Ladera to Apache Drive.

6.** Telegraph Canyon Road, Phase III: Apache Drive to Rutgers Avenue.

7a.** East "H" Street through Rancho Del Rey.

7b.** East "H" Street/I-805 interchange modifications, Phase I.

7c. East "H" Street/I-805 interchange modifications, Phase II.

8.** East "H" Street from Eastlake Drive to SR-125.

9a.** Otay Lakes Rd. intersection with East "H" Street.

9b.** Otay Lakes Road from Camino del Cerro Grande to Ridgeback Road.

10.** Central Avenue from Bonita Road to Corral Canyon Road.

10a.** La Media Road from Telegraph Canyon Road to East Palomar Street.

10b.** La Media Road from East Palomar Street to Olympic Parkway.

11. Bonita Road from Otay Lakes Road to Willow Street.

14.** East "H" Street from SR-125 to San Miguel Road.

15.** Proctor Valley Road (East "H" Street) from San Miguel Road (Mt. Miguel Road) to Hunte Parkway.

16.** Olympic Parkway from Brandywine Avenue to Paseo Ranchero.

17.** East Palomar Street from Oleander Avenue to Medical Center Drive.

17a.** East Palomar Street from Medical Center Drive to Paseo Ladera.

17b. East Palomar Street from Paseo Ladera to Sunbow eastern boundary.

18.** Telegraph Canyon Road, Phase IV: from eastern boundary of Eastlake to Hunte Parkway.

19.** Eastlake Parkway from Otay Lakes Road to Eastlake High School southern boundary.

20.** Hunte Parkway from Proctor Valley Road to Telegraph Canyon Road.

21.** Hunte Parkway from Telegraph Canyon Road to Club House Drive.

21a.** Hunte Parkway from Club House Drive to Olympic Parkway.

22a.** Olympic Parkway, Phase IV: from SDG&E easement to Hunte Parkway.

22b.** Olympic Parkway, Phase V: from SR-125 to SDG&E easement.

23a.** Paseo Ranchero from Telegraph Canyon Road to East Palomar Street.

23b.** Paseo Ranchero from East Palomar Street to Olympic Parkway.

24a.** Olympic Parkway, Phase I: from Paseo Ranchero to La Media Road.

24b.** Olympic Parkway, Phase II: from La Media Drive to East Palomar Street.

24c.** Olympic Parkway, Phase III: from East Palomar Street to SR-125.

24e. Olympic Parkway, Phase VI: from Heritage Road to SR-125.

25a. Olympic Parkway/I-805 interchange modifications.

25b.** Olympic Parkway from Oleander to Brandywine.

26. East Palomar Street from Heritage Road to the Sunbow eastern boundary.

28a.** Otay Lakes Road from Hunte Parkway to Lake Crest Drive.

28b. Otay Lakes Road from Lake Crest Drive to Wueste Road.

29.** Olympic Parkway from Hunte Parkway to Wueste Road.

30.** Otay Lakes Road from SR-125 to Eastlake Parkway.

31.** Eastlake Parkway from Fenton Street to Otay Lakes Road.

32a.** East "H" Street (westbound) from I-805 to Hidden Vista Drive.

32b.** East "H" Street (eastbound) from I-805 to Terra Nova Shopping Center.

33a.** Bonita Road at Otay Lakes Road intersection.

33b.** Telegraph Canyon Road/I-805 interchange modifications, Phase I.

35.** East "H" Street at Otay Lakes Road intersection.

37. Eastlake Parkway from CWA Easement to Olympic Parkway.

38.** East "H" Street from Paseo Del Rey to Tierra del Rey.

39.** Bonita Road from I-805 to Plaza Bonita Road.

41.** Brandywine/Medical Center Drive from Medical Center Court to Olympic Parkway.

42. Birch Road from La Media Road to SR-125.

43. Birch Road from SR-125 to Eastlake Parkway.

45. Eastlake Parkway from Olympic Parkway to Birch Road.

46. Eastlake Parkway from Birch Road to Hunte Parkway/Rock Mountain Road.

47a. San Miguel Ranch Road (formerly Mt. Miguel Road) from Proctor Valley Road North to SR-125.

47b.** Mt. Miguel Road from SR-125 to Proctor Valley Road (South), previously named East "H" Street.

48. Hunte Parkway from Olympic Parkway to Eastlake Parkway.

51a. La Media Road from Olympic Parkway to Santa Venetia.

51b. La Media Road from Santa Venetia to Birch Road.

52. La Media Road from Birch Road to Rock Mountain Road.

53. La Media Road from Rock Mountain Road to Otay Valley Road.

55a. Otay Lakes Road from East "H" Street to Telegraph Canyon Road.

55b. Otay Lakes Road from Canyon Drive to East "H" Street.

56a. Main Street from Nirvana Avenue to 1,600 feet West of Heritage Road/Rock Mountain Road.

56c. Otay Valley Road (formerly Main Street) from La Media Road to SR-125.

56d. Main Street at I-805 underpass widening.

56e. Main Street from 1,600 feet west of Heritage Road/Rock Mountain Road to Heritage Road/Rock Mountain Road.

57. Heritage Road (formerly Paseo Ranchero) from Olympic Parkway to Main Street.

58a. Heritage Road (formerly Paseo Ranchero) from Main Street to southern City boundary (excludes bridge crossing the Otay River).

58b. Paseo Ranchero bridge crossing the Otay River.

59a.** Proctor Valley Road from Hunte Parkway to Rolling Hills Ranch Neighborhood 9 west entrance.

59b. Proctor Valley Road from Rolling Hills Ranch Neighborhood 9 west entrance to Rolling Hills Ranch Neighborhood 9 east entrance.

59c. Proctor Valley Road from Rolling Hills Ranch Neighborhood 9 east entrance to easterly city boundary.

60a. Rock Mountain Road from Main Street/Heritage Road to La Media Road.

60b. Rock Mountain Road from La Media Road to SR-125.

61. Willow Street from Bonita Road to Sweetwater Road (including bridge over Sweetwater River).

62. East "H" Street from Buena Vista Way to Otay Lakes Road.

63. Intersection signalization area wide within the Eastern Territories.

64. Hunte Parkway from SR-125 to Eastlake Parkway.

65. Traffic management center.

66. Transportation demand management.

67. Rock Mountain Road/SR-125 overpass bridge.

68. Otay Valley Road/SR-125 overpass bridge.

** Project has been completed.

Current projects are listed in bold.

B. The city council may modify or amend the list of projects in order to maintain compliance with the circulation element of the city's general plan. (Ord. 3029 § 4, 2005; Ord. 2866 § 4, 2002; Ord. 2802 § 3, 1999).

3.54.040 Developer construction of transportation facilities.

A. Whenever a developer of a development project would be required by application of city law or policy, as a condition of approval of a development permit to construct or finance the construction of a portion of a transportation facility identified in CVMC 3.54.030, the city council may impose an additional requirement that the developer install the improvements with supplemental size, length or capacity in order to ensure efficient and timely construction of the transportation facilities network. If such a requirement is imposed, the city council shall, in its discretion, enter into a reimbursement agreement with the developer, or give a credit against the fee otherwise levied by this chapter on the development project, or some combination thereof.

B. Whenever a developer requests reimbursement, or a credit against fees, for work to be done or paid for by the developer under subsection (A) of this section, the request shall be submitted in writing to the city manager's designee.

1. The request shall contain a description of the project with a detailed cost estimate which itemizes those costs of the construction attributable to the transportation facility project and excludes any work attributable to a specific subdivision project. The estimate is preliminary and the amount of reimbursement or credit against fees is subject to final determination by the city manager's designee. Additional information shall be provided to the city by the developer upon request of the city.

2. Such reimbursement or credit against fees shall be subject to the following conditions:

a. Requirements of Developer.

i. Preparation of plans and specifications for approval by the city;

ii. Secure and dedicate any right-of-way required for the transportation facility project;

iii. Secure all required permits and environmental clearances necessary for the transportation facility project;

iv. Provision of performance bonds (where the developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the value of the transportation facility project);

v. Payment of all city fees and costs.

b. The city will not be responsible for any of the costs of constructing the transportation facility project. The developer shall advance all necessary funds to construct the transportation facility project.

c. The developer shall secure at least three qualified bids for work to be done and shall award the construction contract to the lowest qualified bidder. The developer may combine the construction of the transportation facility project with other development-related work and award one construction contract for the combined work based on a clearly identified process for determining the low bidder, all as approved by the city manager's designee. Should the construction contract be awarded to a qualified bidder who did not submit the lowest bid for the transportation facility project portion of the contract, the developer will only receive transportation development impact fee credit based on the lowest bid for the transportation facility portion of the contract. Any claims for additional payment for extra work or charges shall be justified, shall be

documented to the satisfaction of the city manager's designee and shall only be reimbursed at the prices for similar work included in the lowest bid for the transportation facility portion of the contract.

d. Upon complying with the conditions set forth in subsections (B)(1) and (B)(2)(a) of this section as determined by the city and upon approval of the estimated cost by the city manager's designee, the developer shall be entitled to immediate credit for 50 percent of the estimated cost of the construction attributable to the transportation facility project. Once the developer has received valid bids for the project which comply with subsection (B)(2)(c) of this section, entered into binding contracts for the construction of the project, and met the conditions set forth in subsections (B)(1) and (B)(2)(a) of this section as determined by the city, all of which have been approved by the city manager's designee, the amount of the immediate credit shall be increased to 75 percent of the bid amount attributable to the transportation facility project. The immediate credits shall be applied to the developer's obligation to pay transportation development impact fees for building permits issued after the establishment of the credit. The developer shall specify these building permits to which the credit is to be applied at the time the developer submits the building permit applications.

e. If the developer uses all of the immediate credit before final completion of the transportation facility project, then the developer may defer payment of development impact fees for other building permits by providing to the city liquid security such as cash or an irrevocable letter of credit, but not bonds or set-aside letters, in an amount equal to the remaining amount of the estimated cost of the transportation facility project.

f. When all work has been completed to the satisfaction of the city, the developer shall submit verification of payments made for the construction of the transportation facility project to the city. The city manager's designee shall make the final determination on expenditures which are eligible for credit or cash reimbursement.

g. After final determination of eligible expenditures has been made by the city manager's designee and the developer has complied with the conditions set forth in subsection (B) of this section, the final amount of transportation development impact fee credits shall be determined by the city manager's designee. The developer shall receive credit against the deferred fee obligation in

an amount equal to the difference between the final expenditure determination and the amount of the 75 percent immediate credit used, if any. The city shall notify the developer of the final deferred fee obligation, and of the amount of the applicable credit. If the amount of the applicable credit is less than the deferred fee obligation, then the developer shall have 30 days to pay the deferred fee. If the deferred fees are not paid within the 30-day period, the city may make a demand against the liquid security and apply the proceeds to the fee obligation.

h. At the time building permits are issued for the developer's project, the city will incrementally apply credit which the developer has accrued in lieu of collecting the required transportation development impact fees. The amount of the credit to be applied to each building permit shall be based upon the fee schedule in effect at the time of the building permit issuance. The city manager's designee shall convert such credit to an EDU basis for residential development and/or a gross acre basis for commercial or industrial development for purposes of determining the amount of credit to be applied to each building permit.

i. If the total eligible construction cost for the transportation facility project is more than the total transportation development impact fees which will be required for the developer's project, then the amount in excess of development impact fees will be paid in cash when funds are available as determined by the city manager; a reimbursement agreement will be executed; or the developer may waive reimbursement and use the excess as credit against future transportation development impact fee obligations. The city may, in its discretion, enter into an agreement with the developer to convert excess credit into EDU and/or gross acre credits for use against future development impact fee obligations at the fee rate in effect on the date of the agreement.

j. The requirements of this subsection (B) of this section may, in the city's discretion, be modified through an agreement between the developer and the city and approved by city council.

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C. Whenever a transportation development impact fee credit is generated by constructing a transportation facility using assessment district or community facilities district financing, the credit shall only be applied to the transportation development impact fee obligations within that district. (Ord. 2866 §§ 5, 6, 7, 2002; Ord. 2823 § 1, 2000; Ord. 2802 § 3, 1999).

3.54.050 Procedure for fee waiver or reduction.

A. Any developer who, because of the nature or type of uses proposed for a development project, contends that application of the fee imposed by this chapter is unconstitutional, or unrelated to mitigation of the traffic needs or burdens of the development, may apply to the city council for a waiver, reduction, or deferral of the fee. A development which is designed and intended as a temporary use (10 years or less) and which is conducted in facilities which are, by their nature, short-term interim facilities such as a portable or modular building (including mobile homes, trailers, etc.) may qualify for a waiver, reduction, or deferral. In addition, a deferral may be granted on the basis of demonstrated economic hardship on the condition that: (1) the use offers a significant public benefit; (2) the amount deferred bears interest at a fair market rate so as to constitute an approximate value equivalent to a cash payment; and (3) the amount deferred is adequately secured by agreement with the applicant. Unless the requirement for timely filing is waived by the city, the application shall be made in writing and filed with the city clerk not later than 10 days after notice of the public hearing on the development permit application or the project is given, or if no development permit is required, at the time of the filing of the building permit application. The application shall state in detail the factual basis for the claim of waiver or reduction.

B. Any developer who proposes a golf course and contends that the application of the development impact fee is unrelated to the mitigation of the traffic needs of the golf course may apply to the city council for a reduction of the fee based on the nature of the proposed golf course. An interim reduction may be granted in the city's discretion pursuant to a written agreement with the developer and upon developer's submission of a preliminary traffic study which adequately supports the contention that the fee imposed by this chapter is not related to the traffic to be generated by the golf course. The city's final decision on the fee to be imposed on the golf course will be based on a traf-

fic study to be paid for by the developer and prepared and submitted for approval by the city's director of public works within the fourth year of operation of the fully developed golf course. Should the developer fail to submit such traffic study and obtain the city's approval thereof during the fourth year of golf course operation, the entire fee imposed by this chapter shall be immediately due and payable. If a fee reduction is permitted, the city council may allow developer to pay the development impact fee over a 10-year period.

C. The city council shall consider the application at a public hearing on same, notice of which need not be published other than by description on the agenda of the meeting at which the public hearing is held. Said public hearing should be held within 60 days after its filing. The decision of the city council shall be final. If a deferral, reduction or waiver is granted, it should be granted pursuant to an agreement with the applicant, and the property owner, if different from the applicant, providing that any change in use within the project shall subject the development to payment of the full fee. The procedure provided by this section is additional to any other procedure authorized by law for protesting or challenging the fee imposed by this chapter. (Ord. 2802 § 3, 1999).

3.54.060 Payment of DIF program support.

The "DIF program support" shall, with no exceptions, be paid in cash concurrently with the development impact fee at a rate equal to three percent of the total applicable fee. (Ord. 2802 § 3, 1999).

3.54.070 Exemptions.

Development projects by public agencies shall be exempt from the provisions of this fee.

Exempt development uses with the following characteristics or activities as a principal use of land, generally described as "community purpose facility":

A. Social service activities, including such services as Boy Scouts, Girl Scouts, Boys Club and Girls Club, Alcoholics Anonymous, YMCA and services for the homeless;

B. Public schools (elementary and secondary);

C. Private schools (elementary and secondary);

D. Day care (nonprofit only);

E. Senior care and recreation (nonprofit only);

F. Worship, spiritual growth and development. (Ord. 2802 § 3, 1999).

3.54.080 Assessment districts.

If any assessment or special taxing district is established for any or all of the facilities listed in CVMC 3.54.030, the owner or developer of a project may apply to the city council for a credit against the fee in an amount equal to the development's attributable portion of the cost of the authorized improvements as determined by the director of public works, plus incidental costs normally occurring with a construction project, but excluding costs associated with assessment district proceedings or financing. (Ord. 2802 § 3, 1999).

3.54.090 Economic incentive credit.

The city council may authorize the city to participate in the financing of transportation facility projects or portions of transportation facility projects as defined in CVMC 3.54.030. At the time of the appropriation of funds by city council for the construction of an eligible transportation facility, the city shall be eligible to receive a credit known hereafter as an economic incentive credit. Such economic incentive credit may be applied to development impact fee obligations for those projects which the city council determines, in its sole discretion, to be beneficial to the city. The use of the economic incentive credit may be subject to conditions which shall be set forth in a written agreement between the developer of the project and the city and approved by city council. The amount of the credit shall be determined pursuant to CVMC 3.54.040(B).

The city may receive economic incentive credit only for those eligible projects (i) identified in CVMC 3.54.030 and (ii) for amounts of funding not identified in the financial and engineering study, "Eastern Area Development Impact Fee for Streets" dated July 2002. (Ord. 2866 § 8, 2002).

Chapter 3.55

WESTERN TRANSPORTATION DEVELOPMENT IMPACT FEE

Sections:

- 3.55.010 General intent.
- 3.55.020 Definitions.
- 3.55.030 Public transportation facilities to be financed by the fee.
- 3.55.040 Territory to which fee applicable.
- 3.55.050 Establishment of a fee.
- 3.55.060 Determination of fees by land use category.
- 3.55.070 Time to determine amount due.
- 3.55.080 Purpose and use of fee.
- 3.55.090 Amount of fee.
- 3.55.100 Development projects exempt from the fee.
- 3.55.110 Authority for accounting and expenditures.
- 3.55.120 Findings.
- 3.55.130 Fee additional to other fees and charges.
- 3.55.150 Developer construction of transportation facilities.
- 3.55.160 Procedure for fee waiver or reduction.
- 3.55.170 Assessment districts.
- 3.55.180 Economic incentive credit.
- 3.55.190 Fund loans.
- 3.55.200 Effective date.

3.55.010 General intent.

The City's General Plan Land Use and Transportation Element requires that adequate public facilities be available to accommodate increased population created by new development within the City of Chula Vista.

The City Council has determined that new development will create adverse impacts on the City's existing public transportation facilities which must be mitigated by the financing and construction of certain public transportation facilities which are the subject of this chapter. New development contributes to the cumulative burden on these public transportation facilities in direct relationship to the amount of vehicular traffic and population generated by the development or the gross acreage of the commercial or industrial land in the development.

The City Council has determined that a reasonable means of financing the public transportation facilities is to charge a fee on all developments within the western portion of the City. Imposition

of the Western Transportation Development Impact Fee on all new development for which building permits have not yet been issued is necessary in order to protect the public health, safety and welfare, thereby ensuring effective implementation of the City's General Plan. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.020 Definitions.

For the purposes of this chapter, the following words or phrases shall be construed as defined herein, unless from the context it appears that a different meaning is intended.

A. "Building permit" means a permit required by and issued pursuant to the California Building Code.

B. "City Engineer" means the City Engineer, the City Engineer's designee or the City Manager's designee.

C. "Density" means dwelling units per gross acre identified for each planning area shown on the approved tentative map or approved tentative parcel map or as determined by the City Manager's designee.

D. "Developer" means the owner or developer of a development.

E. "Development permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the City.

F. "Development project" or "development" means any activity described as the following:

1. Any new residential dwelling unit developed on vacant land;
2. Any new commercial/office or industrial development constructed on vacant land;
3. Any expansions to established developments or new developments on nonvacant land in those land use categories listed in subsections (F)(1) and (2) of this section, if the result is a net increase in dwelling units. The fee shall be based solely on this net dwelling unit increase;
4. Any new or expanding special land use project;
5. Any special purpose project developed on vacant land or nonvacant land, or expanded within a pre-existing site, if the result is a net increase in dwelling units. The fee shall be based solely on this net dwelling unit increase;
6. Any other development project not listed above but described in Section 65927 and 65928 of the State Government Code.

G. “Community purpose facility” means a facility which serves one of the following purposes:

1. Social service activities, including such services as Boy Scouts and Girl Scouts, Boys and Girls Club, Alcoholics Anonymous and services for the homeless;
2. Public schools;
3. Private schools;
4. Day care;
5. Senior care and recreation;
6. Worship, spiritual growth and development.

H. “Western portion of the City of Chula Vista” generally means that area of the City located between the City boundary on the west, Interstate 805 on the east, the City boundary on the north and the City boundary on the south, as shown on the map entitled “Figure 1” of the engineering study.

I. “Engineering study” and “Engineer’s Report” means the Engineer’s Report for the Western Transportation Development Impact Fee dated February, 2008, and prepared by City staff on file in the office of the City Clerk.

J. “Regional Arterial System (RAS).” RAS roadways are generally described as those facilities that act as a critical link in providing direct connections between communities ensuring system continuity and congestion relief in high volume corridors. They are roadways that are listed in the most recent edition of SANDAG’s Regional Transportation Plan.

K. “Special land use” means any nonresidential, noncommercial/office or nonindustrial development project (e.g., Olympic Training Center, hospitals, utilities), or non-special purpose project.

L. “Special purpose project” means any for-profit community purpose facility (e.g., day care). (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.030 Public transportation facilities to be financed by the fee.

A. The public transportation facilities (facilities) which are the subject matter of the fee are listed below as detailed in subsection (C) of this section and in the Engineer’s Report on file in the office of the City Clerk.

B. The City Council may modify or amend the list of projects in order to maintain compliance with the Circulation Element of the City’s General Plan.

C. The facilities are as follows:

1. (I-5-1) I-5/E Street NB off-ramp re-striping, add lane
2. (I-5-2) I-5/E Street/Bay Boulevard SB off-ramp re-striping, add lane
3. (I-5-3) I-5/NB ramp widening at E, H, J, Ind., Palomar and Main Streets (21%)
4. (I-5-4) E Street bridge widening over I-5 (250' X 20' X \$350.00/sf)
5. (I-5-5) F Street bridge widening over I-5 (250' X 20' X \$350.00/sf)
6. (I-5-6) I-5/H Street NB off-ramp re-striping, add lane
7. (I-5-7) I-5/H Street SB off-ramp re-striping, add lane
8. (I-5-8) H Street bridge widening over I-5 (200' X 40' X \$350.00/sf)
9. (I-5-9) I-5/J Street NB off-ramp re-striping, add lane
10. (I-5-10) I-5/J Street under-crossing widening, add EB-NB (175' X 20' X \$350.00/sf)
11. (I-5-11) L Street bridge widening over I-5 (S/W for peds 300' X 12') (21%)
12. (I-5-12) I-5/Bay Boulevard (south of L Street) SB on-/off-ramps traffic signal
13. (I-5-13) I-5/Industrial Boulevard NB on-/off-ramps, traffic signal
14. (I-5-14) I-5/Palomar Street bridge widening (275 lf X 50 lf X \$350.00/sf)
15. (I-5-15) I-5/Main Street NB on-/off-ramps, traffic signal (CV share \$120,000)
16. (I-5-16) I-5/Main Street bridge widening (275 lf X 20 lf X \$350.00/sf)
17. (I-5-17) I-5 HOV add managed lanes from SR 905 to SR 54 (63.4% in CV)
18. STM 361
 - a. I-5 Multi-Modal Corridor Study (80% Fed. DEMO funds)
 - b. (SANDAG cost estimate is \$4,300,000 and CV share TBD)

Interstate-805 Improvements

19. (I-805-1) NB on-ramp widening and metering at Bonita, East H Street (EB-NB), Telegraph Canyon Road (Project I-805-1 is 100% funded in 2006 RTIP with state funds.)
20. (I-805-2) Main Street under-crossing widening for EB-NB left turn lane

State Route 54 Improvements

21. SR-54-1) SR-54 WB off-ramp re-stripe at Broadway
22. (SR-54-2) SR-54 EB off-ramp at N. Fourth Avenue – add ramp lane

Regional Arterial System (RAS) Projects

23. (RAS-1) Bonita Road from First Avenue to I-805
24. (RAS-2) Broadway from C Street to south of Main Street (City Limits)
25. (RAS-3) E Street improvements – First Ave to Bonita Road/E. Flower Street
26. (RAS-4) E Street improvements, I-5 to 300 feet east of NB ramp
27. (RAS-5) E Street LRT grade separation (underpass LRT option)
28. (RAS-6) H Street LRT grade separation (underpass LRT option)
29. (RAS-7) H Street at Broadway EB queue jumper lane and traffic signal modifications
30. (RAS-8) H Street 14'-wide median and street light improvements (same as RAS-9)
31. (RAS-9) H Street widening to six lanes from I-5 to Broadway
32. (RAS-10) H Street improvements from Second Avenue to Hilltop Drive
33. (RAS-11) East H St. north side improvements from Hilltop Drive to I-805
34. (RAS-12) L Street/Bay Boulevard traffic signal and add turn lanes
35. (RAS-13) L Street improvements south side west of Industrial Boulevard
36. (RAS-14) Telegraph Canyon Road at I-805 south side sidewalk
37. (RAS-15) Orange Avenue from Palomar Street to Hilltop Drive

38. (RAS-16) Palomar Street improvements from I-5 to I-805
39. (RAS-17) Main St. improvements from I-5 to I-805 (See GPU Table 5.10-6)
40. (RAS-18) H Street/4th Avenue add WB-NB and EB-SB right turn lanes
41. (RAS-19) H Street/4th Avenue add WB-NB and EB-SB right turn lanes

General Plan Impacts and Mitigations

42. (GP-1) E. St. from Marina to I-5
43. (GP-2) Marina Parkway from E-J Street
44. (GP-3) L St. from Hilltop to I-805
45. (GP-4) Main St. from I-5 to Broadway
46. (GP-5) Main St. from Broadway to Hilltop Drive
47. (GP-6) Third Avenue from L Street to Palomar Street
48. (GP-7) H Street from Marina to I-5
49. (GP-8) J Street from Marina to I-5

Bicycle and Pedestrian Facilities**Improvements (21% WTDIF share per GPU)**

50. (BP-1) Bayshore Bikeway (bike path) between E Street and F Streets
51. (BP-2) F Street sidewalk/bike lane improvements from I-5 to Fourth Avenue
52. (BP-3) Industrial Boulevard improvements and bike lanes from L Street to Main Street
53. (BP-4) Main Street bike lanes from Industrial Boulevard and I-805
54. (BP-5) Orange Avenue bike lanes from Palomar Street to Hilltop Drive
55. (BP-6) Develop bicycle paths and pedestrian access to Third Avenue

Midbayfront Local Coastal Program**Roadways**

56. (Mid-1) E Street re-stripe to add EB-NB dual left turn to NB I-5 on-ramp
57. (Mid-2) I-5/E St. SB off-ramp widening to add fourth lane
58. (Mid-3) Bay Boulevard 15-foot widening along Westerly Curb Line at E Street approach for 1SB/3NB
59. (Mid-4) I-5/E Street NB widen off-ramp to add third lane for right turn only lane

60. (Mid-5) E Street revisions to median and north curb line east of I-5 to add third WB lane
61. (Mid-6) Marina Parkway 4-lane from E Street to J Street
62. (Mid-7) E Street/Woodlawn Avenue EB-SB RT lane plus a traffic signal)
63. (Mid-8) E Street at Broadway add WB and EB LT lane plus WB and EB RT only lane, plus a traffic signal and no R/W costs.
64. (Mid-9) F Street/Broadway re-striping to provide EB-SB and WB-NB RT lane
65. (Mid-10) H Street widening at Broadway for WB through and EB through and RT only.

Other Roadways

66. (OR-1) N. 4th Avenue/Brisbane Avenue traffic signal modifications
67. (OR-2) Second Avenue/D Street all-way stop installation
68. (OR-4) Traffic Management Center (30% TDIF/30% WTDIF/40% TS Fund).

(Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.040 Territory to which fee applicable.

The area of the City of Chula Vista to which the fee herein established shall be applicable is the territorial limits of the western portion of the City of Chula Vista (territory) as defined above, as they may from time to time be amended. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.050 Establishment of a fee.

A development impact fee (fee) is hereby established to pay for the facilities within the territory. The fee shall be paid upon the issuance of building permits for each development project within the western portion of the City of Chula Vista. The WTDIF fee in the amounts set forth in CVMC 3.55.090 is hereby established to pay for transportation improvements and facilities within the western portion of the City of Chula Vista. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.060 Determination of fees by land use category.

A. For purposes of this fee, single-family dwelling units shall include single-family detached homes and detached condominiums; multifamily dwelling units shall include attached condominiums, townhouses, duplexes, triplexes, and apartments. The density of the development type shall be based on the number of dwelling units per gross acre for single-family or multifamily residential and shall be based upon the densities identified on the approved tentative map or approved tentative parcel map entitling the development unless otherwise approved in writing by the City Manager's designee.

B. Commercial/office and industrial development projects shall be charged on a per acre or per square footage basis. For purposes of this fee, gross acreage and/or square footage as it applies to the commercial, industrial and office development types means all land area that the City Manager's designee deems necessary within the boundary of the parcel or parcels of the development project for which building permits are being requested.

C. The fee multiplied by the total number of dwelling units, square footage or acres within a given development project represents a developer's fair share ("fair share") for that development project. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.070 Time to determine amount due.

The fee for each development shall be calculated at the time of building permit issuance and shall be the amount as indicated at that time, and not when the tentative map or final map was granted or applied for, or when the building permit plan check was conducted, or when application was made for the building permit. No building permit shall be issued unless the development impact fee is paid. The fees shall be deposited into a WTDIF fund, which is hereby created, and shall be expended only for the purposes set forth in this chapter. The Director of Finance is authorized to establish various accounts within the fund for the various improvements and facilities identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein in accordance with the facilities phasing plan or capital improvement plan adopted by the City Council. The City Council finds that collection of the fees established by this chapter at the time of the building permit is necessary to ensure that funds will be

available for the construction of facilities concurrent with the need for those facilities and to ensure certainty in the capital facilities budgeting for the western part of the City. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.080 Purpose and use of fee.

The fees collected shall be used by the City for the following purposes as determined by the City Council:

A. To pay for the construction of facilities by the City, or to reimburse the City for facilities installed by the City with funds from other sources.

B. To reimburse developers who have been required by CVMC 3.55.150(A) to install improvements that are major streets and are listed in CVMC 3.55.030.

C. To reimburse developers who have been permitted to install improvements pursuant to CVMC 3.55.150(B). (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.090 Amount of fee.

A. The fee shall be the amounts as set forth below in Table 1. The fee shall be adjusted on July 1st of each year beginning in 2009. The annual inflation adjustment will be two percent or based on Caltrans Highway Construction Cost Index, whichever is higher. The program collects two percent of the total improvement cost estimate for staff administration and an additional one percent for SANDAG administrative costs.

B. Adjustments of the fee based upon the annual inflation adjustment or the Caltrans Highway Construction Cost Index shall be automatic and shall not require further action by the City Council. The WTDIF may also be reviewed and amended by the City Council as necessary based on changes in the type, size, location or cost of the facilities to be financed by the fee; changes in land use designation in the City’s General Plan; and upon other sound engineering, financing and planning information.

**Table 1
PROPOSED WTDIF FEE PER LAND USE CLASSIFICATION**

Proposed TDIF Fee per EDU:		\$3,243.00	
Land Use Classification		EDUs	TDIF Rate
RESIDENTIAL			
Residential (LOW)	0 to 6 dwelling units per acre	1 per EDU	\$3,243/DU
Residential (MED)	6.1 to 20 dwelling units per acre	0.8 per EDU	\$2,594/DU
Residential (HIGH)	Over 20 dwelling units per acre	0.6 per EDU	\$1,946/DU
Mobile Home		0.5 per EDU	\$1,622/DU
COMMERCIAL			
Regional Commercial	Contain 1 – 5 major dept. stores and usually have more than 50 tenants. Typically larger than 40 acres.	20 EDU/Acre	\$64,860/Acre
Community Commercial	Smaller in that size than regional. Contain junior dept. store or variety store, (i.e., Target Center with other commercial stores) as a major tenant and have 15 to 50 other tenants. Smaller in size, 8 – 20 acres.	28 EDU/Acre	\$90,804/Acre
Neighborhood Commercial	Less than 10 acres. Includes supermarket and drug store. May include office spaces.	48 EDU/Acre	\$155,664/Acre
Neighborhood Commercial	Same as above but in square footage.	4.8 EDU/KSF	\$15,664/KSF
Street Front Commercial	Commercial activities found along major streets, not in a planned center with limited on-site parking.	16 EDU/Acre	\$51,888/Acre
Retail Commercial	Specialty retail/strip commercial.	16 EDU/Acre	\$51,888/Acre
Wholesale Trade	Usually located near transportation facilities. Structures are usually large and cover majority of the parcel. Examples are clothing and supply; also includes swap meet areas.	24 EDU/Acre	\$77,832/Acre

Table 1
PROPOSED WTDIF FEE PER LAND USE CLASSIFICATION (Continued)

Proposed TDIF Fee per EDU:		\$3,243.00	
Land Use Classification		EDUs	TDIF Rate
OFFICE			
High Rise Office	More than 100,000 S.F. and 6+ Stories	60 EDU/Acre	\$194,580/Acre
Low Rise Office	< 6 Stories	30 EDU/Acre	\$97,290/Acre
Low Rise Office (in thousands of square feet)	< 6 Stories	2 EDU/KSF	\$6,486/KSF
Medical Office	Medical and dental facilities	50 EDU/Acre	\$162,150/Acre
LODGING			
Low Rise Hotel/Motel	< 4 Stories	20 EDU/Acre	\$64,860/Acre
Low Rise Hotel/Motel	< 4 Stories	1 EDU/Room	\$3,243/Room
High Rise Hotel	>=4 Stories	30/EDU/Acre	\$97,290/Acre
INDUSTRY			
Heavy Industry	Shipbuilding, airframe, and aircraft manufacturing. Usually located next to transportation facilities and commercial areas. Parcels are typically 20 – 50 acres.	12 EDU/Acre	\$38,916/Acre
Warehouse/Storage	Usually large buildings located near freeways, industrial or strip commercial areas.	6 EDU/Acre	\$19,458/Acre
Industrial Park	Office/industrial uses clustered into a center. The primary uses are industrial by may include high percentages of other uses in service or retail activities.	9 EDU/Acre	\$29,187/Acre
Light Industrial	All other industrial uses and manufacturing not included in categories above.	20 EDU/Acre	\$64,860/Acre

(Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.100 Development projects exempt from the fee.

A. Development projects by public agencies shall be exempt from the provisions of the fee if those projects are designed to provide the public service for which the agency is charged (public purpose).

B. Community purpose facilities which are not operated for profit (nonprofit community purpose facilities) are also exempt inasmuch as these institutions provide benefit to the community as a whole, including all land use categories which are the subject matter of the fee. The City Council hereby determines that it is appropriate to spread any impact such nonprofit community purpose facilities might have to the other land use categories subject to the fee. In the event that a court determines that the exemption herein extended to community purpose facilities shall for any reason be invalid, the City Council hereby allocates the nonprofit community purpose facilities' fair share

to the City of Chula Vista and not to any of the land use categories which are the subject matter of the development impact land use categories.

C. Development projects which are additions or expansions to existing dwelling units or businesses, except special land use projects, shall be exempt if the addition or expansion does not result in a net increase in dwelling units or commercial/industrial acreage. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.110 Authority for accounting and expenditures.

A. The fees collected shall be deposited into a Western Transportation Development Impact Fee financing fund (WTDIF fee fund, or fund), which is hereby created and shall be expended only for the purposes set forth in this chapter.

B. The Director of Finance is authorized to establish a single fund for the various facilities

identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.120 Findings.

The City Council finds that:

A. Collection of the fee established by this chapter at the time of the building permit issuance is necessary to provide funds for the transportation facilities identified in CVMC 3.55.030 and to ensure certainty in the capital facilities budgeting for growth-impacted public transportation facilities; and

B. The purpose of the fees hereby enacted prevents new development from reducing the quality and availability of public transportation infrastructure facilities provided to residents of the City by requiring new development to contribute to the cost of additional capital transportation infrastructure improvements needed to meet the growth generated by such development; and

C. The revenue from the fees hereby enacted will be used to construct public facilities and infrastructure and pay for other capital expenditures needed to serve new development as identified in the Engineer's Report dated February, 2008; and

D. Based on analysis presented in the Engineer's Report there is a reasonable relationship between:

1. The use of the fees and the types of development projects on which they are imposed;

2. The need for facilities and the types of development projects on which the fees are imposed; and

3. The amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.130 Fee additional to other fees and charges.

This fee is in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or developments. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.150 Developer construction of transportation facilities.

A. Whenever a developer of a development project would be required by application of City law or policy, as a condition of approval of a development permit, to construct or finance the construction of a portion of a transportation facility identified in CVMC 3.55.030, the City Council may impose an additional requirement that the developer install the improvements with supplemental size, length or capacity in order to ensure efficient and timely construction of the transportation facilities network. If such a requirement is imposed, the City Council shall, in its discretion, enter into a reimbursement agreement with the developer, or give a credit against the fee otherwise levied by this chapter on the development project, or some combination thereof.

B. Whenever a developer requests reimbursement, or a credit against fees, for work to be done or paid for by the developer under subsection (A) of this section, the request shall be submitted in writing to the City Manager's designee.

1. The request shall contain a description of the project with a detailed cost estimate which itemizes those costs of the construction attributable to the transportation facility project and excludes any work attributable to a specific subdivision project. The estimate is preliminary and the amount of reimbursement or credit against fees is subject to final determination by the City Manager's designee. Additional information shall be provided to the City by the developer upon request of the City.

2. Such reimbursement or credit against fees shall be subject to the following conditions:

a. Requirements of Developer.

i. Preparation of plans and specifications for approval by the City;

ii. Secure and dedicate any right-of-way required for the transportation facility project;

iii. Secure all required permits and environmental clearances necessary for the transportation facility project;

iv. Provision of performance bonds (where the developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the value of the transportation facility project);

v. Payment of all City fees and costs.

b. The City will not be responsible for any of the costs of constructing the transportation facility project. The developer shall advance all neces-

sary funds to construct the transportation facility project.

c. The developer shall secure at least three qualified bids for work to be done and shall award the construction contract to the lowest qualified bidder. The developer may combine the construction of the transportation facility project with other development-related work and award one construction contract for the combined work based on a clearly identified process for determining the low bidder, all as approved by the City Manager's designee. Should the construction contract be awarded to a qualified bidder who did not submit the lowest bid for the transportation facility project portion of the contract, the developer will only receive transportation development impact fee credit based on the lowest bid for the transportation facility portion of the contract. Any claims for additional payment for extra work or charges shall be justified, shall be documented to the satisfaction of the City Manager's designee and shall only be reimbursed at the prices for similar work included in the lowest bid for the transportation facility portion of the contract.

d. Upon complying with the conditions set forth in subsections (B)(1) and (B)(2)(a) of this section as determined by the City and upon approval of the estimated cost by the City Manager's designee, the developer shall be entitled to immediate credit for 50 percent of the estimated cost of the construction attributable to the transportation facility project. Once the developer has received valid bids for the project which comply with subsection (B)(2)(c) of this section, entered into binding contracts for the construction of the project, and met the conditions set forth in subsections (B)(1) and (B)(2)(a) of this section as determined by the City, all of which have been approved by the City Manager's designee, the amount of the immediate credit shall be increased to 75 percent of the bid amount attributable to the transportation facility project. The immediate credits shall be applied to the developer's obligation to pay transportation development impact fees for building permits issued after the establishment of the credit. The developer shall specify these building permits to which the credit is to be applied at the time the developer submits the building permit applications.

e. If the developer uses all of the immediate credit before final completion of the transportation facility project, then the developer may defer payment of development impact fees for other building permits by providing to the City liquid

security such as cash or an irrevocable letter of credit, but not bonds or set-aside letters, in an amount equal to the remaining amount of the estimated cost of the transportation facility project.

f. When all work has been completed to the satisfaction of the City, the developer shall submit verification of payments made for the construction of the transportation facility project to the City. The City Manager's designee shall make the final determination on expenditures which are eligible for credit or cash reimbursement.

g. After final determination of eligible expenditures has been made by the City Manager's designee and the developer has complied with the conditions set forth in subsection (B) of this section, the final amount of transportation development impact fee credits shall be determined by the City Manager's designee. The developer shall receive credit against the deferred fee obligation in an amount equal to the difference between the final expenditure determination and the amount of the 75 percent immediate credit used, if any. The City shall notify the developer of the final deferred fee obligation, and of the amount of the applicable credit. If the amount of the applicable credit is less than the deferred fee obligation, then the developer shall have 30 days to pay the deferred fee. If the deferred fees are not paid within the 30-day period, the City may make a demand against the liquid security and apply the proceeds to the fee obligation.

h. At the time building permits are issued for the developer's project, the City will incrementally apply credit which the developer has accrued in lieu of collecting the required transportation development impact fees. The amount of the credit to be applied to each building permit shall be based upon the fee schedule in effect at the time of the building permit issuance. The City Manager's designee shall convert such credit to an EDU basis for residential development and/or a gross acre basis for commercial or industrial development for purposes of determining the amount of credit to be applied to each building permit.

i. If the total eligible construction cost for the transportation facility project is more than the total transportation development impact fees which will be required for the developer's project, then the amount in excess of development impact fees will be paid in cash when funds are available as determined by the City Manager; a reimbursement agreement will be executed; or the developer may waive reimbursement and use the excess as credit against future transportation development

impact fee obligations. The City may, in its discretion, enter into an agreement with the developer to convert excess credit into EDU and/or gross acre credits for use against future development impact fee obligations at the fee rate in effect on the date of the agreement.

j. The requirements of this subsection (B) of this section may, in the City's discretion, be modified through an agreement between the developer and the City and approved by City Council.

C. Whenever a transportation development impact fee credit is generated by constructing a transportation facility using assessment district or community facilities district financing, the credit shall only be applied to the transportation development impact fee obligations within that district. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.160 Procedure for fee waiver or reduction.

A. Any developer who, because of the nature or type of uses proposed for a development project, contends that application of the fee imposed by this chapter is unconstitutional, or unrelated to mitigation of the traffic needs or burdens of the development, may apply to the City Council for a waiver, reduction, or deferral of the fee. A development which is designed and intended as a temporary use (10 years or less) and which is conducted in facilities which are, by their nature, short-term interim facilities such as a portable or modular building (including mobile homes, trailers, etc.) may qualify for a waiver, reduction, or deferral. In addition, a deferral may be granted on the basis of demonstrated economic hardship on the condition that: (1) the use offers a significant public benefit; (2) the amount deferred bears interest at a fair market rate so as to constitute an approximate value equivalent to a cash payment; and (3) the amount deferred is adequately secured by agreement with the applicant. Unless the requirement for timely filing is waived by the City, the application shall be made in writing and filed with the City Clerk not later than 10 days after notice of the public hearing on the development permit application or the project is given or, if no development permit is required, at the time of the filing of the building permit application. The application shall state in detail the factual basis for the claim of waiver or reduction.

B. The City Council shall consider the application at a public hearing on same, notice of which

need not be published other than by description on the agenda of the meeting at which the public hearing is held. Said public hearing should be held within 60 days after its filing. The decision of the City Council shall be final. If a deferral, reduction or waiver is granted, it should be granted pursuant to an agreement with the applicant and the property owner, if different from the applicant, providing that any change in use within the project shall subject the development to payment of the full fee. The procedure provided by this section is additional to any other procedure authorized by law for protesting or challenging the fee imposed by this chapter. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.170 Assessment districts.

If any assessment or special taxing district is established for any or all of the facilities listed in CVMC 3.55.030, the owner or developer of a project may apply to the City Council for a credit against the fee in an amount equal to the development's attributable portion of the cost of the authorized improvements as determined by the City Manager's designee, plus incidental costs normally occurring with a construction project, but excluding costs associated with assessment district proceedings or financing. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.180 Economic incentive credit.

The City Council may authorize the City to participate in the financing of transportation facility projects or portions of transportation facility projects as defined in CVMC 3.55.030 at the time of the appropriation of funds by City Council for the construction of an eligible transportation facility; the City shall be eligible to receive a credit known hereafter as an economic incentive credit. Such economic incentive credit may be applied to development impact fee obligations for those projects which the City Council determines, in its sole discretion, to be beneficial to the City. The use of the economic incentive credit may be subject to conditions which shall be set forth in a written agreement between the developer of the project and the City and approved by City Council.

The City may receive economic incentive credit only for those eligible projects identified in CVMC 3.55.030 for amounts of funding not identified in the financial and engineering study "Western Transportation Development Impact Fee" report

dated February, 2008. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.190 Fund loans.

A. Loans by the City. The City may loan funds to the fund to pay for facilities should the fund have insufficient funds to cover the cost of said facility. Said loans, if granted, shall be approved upon the adoption of the annual City budget or upon resolution of the City Council and shall carry interest rates as set by the City Council for each fiscal year. A schedule for repayment of said loans shall be established at the time they are made and approved by the Council, with a maximum term not to exceed the life of the fund.

B. Developer Loans. A developer may loan funds to the City as outlined in CVMC 3.55.150. The City may repay said developer loans with interest, under the terms listed in subsection (A) of this section. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).

3.55.200 Effective date.

This chapter shall become effective May 17, 2008. (Ord. 3110 § 2, 2008; Ord. 3109 § 2, 2008; Ord. 3108 § 2, 2008; Ord. 3107 § 2, 2008; Ord. 3106 § 2, 2008).