

ORDINANCE NO. 4309

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, AMENDING AND RESTATING CHAPTER 70 OF ARTICLE III OF THE POMONA MUNICIPAL CODE RELATING TO DEVELOPMENT IMPACT FEE ADMINISTRATION AND SECTION 62-399(b) OF THE POMONA MUNICIPAL CODE RELATING TO SEWER CONNECTIONS

WHEREAS, the City Council of the City of Pomona hereby finds as follows:

A. The state of California, through the enactment of Government Code Sections 66001 through 66009 has, among other things, determined the nexus that must be established in the enactment of development fees.

B. The provision of new and expanded facilities and infrastructure is necessary to protect and promote the health, safety and welfare of all the citizens of Pomona by reducing the adverse effects of urbanization and development.

C. It is necessary to enact and implement certain development fees and other fees to assure that all development within the City pays its fair share of the costs of providing necessary public facilities and infrastructure to accommodate such new development.

D. A proper funding source for the costs associated with new development is a specific development or facilities fee for each type of facility related to the specific need created by the development and reasonably related to the relative cost of providing such necessary public facilities.

E. The primary purpose of the fees is to mitigate the impact on City facilities and infrastructure caused by increased demand for facilities and infrastructure from new residents and persons generated by new development.

F. The fees will be used to finance public facilities and infrastructure required to accommodate the needs of new development in the City.

G. The use of the fees to fund such public facilities and infrastructure is reasonably related to the impacts of residential development on the City.

H. The need for development fees to fund such public facilities is reasonably related to impacts on the City of residential development and other development.

I. To assure fair and legally sound implementation of the development fees established in this Article, such fees shall be reviewed annually and shall be set by separate resolution of the City Council following notice and hearing, in accordance with California law.

J. To assure fair implementation of the development fees established in this Article, the City must have the latitude to defer or waive such fees in special cases, where better or more fair financing arrangements would result from such deferral, or where imposition of such fees would cause inequities.

K. The provisions of this Article are in addition to all other provisions of the Pomona Municipal Code and all new residential, as defined in this Article, and shall be subject to the provisions of this Article and to all other provisions of the Pomona Municipal Code.

L. The provisions of this Article are intended to provide administrative guidance for certain existing fees that pre-date this Article, as well as any new fees adopted after the effective date of this Article.

M. Certain provisions in this Article are adopted in accordance with California Government Code, Section 66000 et. seq. and are intended to be interpreted consistently with that authority.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pomona as follows:

SECTION 1. Recitals. The City Council hereby finds that the foregoing recitals are true and correct and are incorporated herein.

SECTION 2. CEQA Compliance. The City Council of the City of Pomona finds the adoption of this ordinance to be statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Regulation 15061(b)(3). Under Regulation 15061(b)(3), the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the project is exempt from CEQA. This ordinance will not affect the physical environment by permitting a new use or intensifying an existing use. The ordinance establishes a policy commission. There is no potential for the changes to result in a significant effect on the environment.

SECTION 3. Chapter 70 of Article III of the City of Pomona Municipal Code is hereby amended and restated read as follows:

“ARTICLE III. - DEVELOPMENT FEE ADMINISTRATION

Sec. 70-66. Purpose and Applicability.

A. The City Council declares the purpose of this Article is to provide an administrative mechanism for the collection of fees that are collected to finance adequate infrastructure and other public improvements and facilities made necessary by

the impacts created by new development in the City of Pomona in order to promote the health, safety and welfare of the citizens of Pomona. This Article shall apply solely to development projects that propose construction of new dwelling units or additions to existing dwelling units in the City of Pomona.

B. The following are specifically exempt from the provisions of this Article:

1. Approved tentative subdivision maps or lots created by recorded maps that are otherwise vested pursuant to California Government Code, Sections 66498.1 through 66498.9 or other applicable vesting laws affecting development fees for the period of time authorized in Section 66498.1 and 66498.5. Such recorded lots and/or approved tentative subdivision maps shall pay the applicable development fees based upon the rates in effect at the time the subdivision map application was deemed complete. The Public Works Director and/or Planning Director or their designees are hereby empowered to determine, on a case by case basis, whether such tentative subdivision maps or recorded lots are vested for purposes of determining the applicable development fees.

2. Development projects that have previously paid a development fee in the fee category being charged.

C. These exemptions shall not apply to the payment of fees adopted and pursuant to other laws, including California Government Code, Section 66013.

Sec. 70-67. Definitions.

A. "Affected Territory" means the corporate boundaries of the City of Pomona as these may be amended from time to time.

B. "Development project" means any project undertaken for the purpose of development of residential land uses. "Development project" means and includes a project involving the issuance of a permit for construction or reconstruction, remodeling, or any work requiring any permit under the ordinances of the City of Pomona, as the same presently exist or may be amended from time to time hereafter. The term "development project" shall also include permits for erection of manufactured housing or additional or structures, and structures moved into the City.

C. "Effective Date" means the date that the fees in this Article are eligible for collection, that date being sixty (60) days after adoption of any Resolution establishing the development fees.

D. "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by the City to an applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Section 66477 of the California Government Code, fees for processing applications for

governmental regulatory actions or approvals, or fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864) of Chapter 4, Division 1, Title 7 of the California Government Code. Fee also includes any connection fees adopted pursuant to resolution of the City Council and California Government Code, Section 66013.

E. "Work/live unit" means an area comprised of one or more rooms or floors in a building originally designed for industrial or commercial occupancy which has been or will be remodeled or altered to include:

- (1) Cooking space and sanitary facilities;
- (2) Sleeping space; and
- (3) Working space reserved for persons residing therein

F. "Public facilities" means and includes public improvements, public services and community amenities to be funded by development fees.

G. "Secondary Residential Unit" or Accessory Dwelling Unit" means a second dwelling unit on the same lot as an existing primary residential unit, as described in Section.5809-26(C) of the Pomona Municipal Code.

Sec. 70-68. Establishment of development new fees.

In addition to any existing fees previously adopted, the City Council is hereby authorized to adopt and impose on all development projects seeking the issuance of building permits and/or certificates of occupancy for development projects or development certain development and other fees to accommodate the infrastructure needs of new development.

Sec. 70-69. Adoption of development fees by resolution.

The City Council shall, by resolution, set forth the specific amount of the development fees for the Affected Area, describe the benefit on which the fees are imposed, list the specific public improvements to be financed and describe the estimated cost of these facilities.

Sec. 70-70. Imposition of development fees.

A. Any person who, after the effective date of a resolution establishing new or revised development fees, that, seeks to develop land within the City by applying for a building permit or applying for any discretionary land use permit for residential development within the Affected Area, is hereby required to pay the appropriate development fees established pursuant to this Article in the manner, amount and for the purposes therein referenced and as referenced in any resolution adopted by the City Council adopting such fees.

B. Notwithstanding anything to the contrary set forth in subsection A of this section or in any other provision of this Article, development fees shall not apply to any development project described in Section 70-67(B) of this Article.

C. The fees authorized by this Article shall be cumulative such that each person seeking a permit for a development project shall be charged each applicable fee.

Sec. 70-71. Accounting and Disbursement of Fees.

A. Each of the fees paid pursuant to this Article or any applicable law and any resolution establishing new or increased development fees shall be placed in a separate fund, each of which may be further segregated by specific project. These funds shall be known, respectively, as:

1. Roadway and Traffic Signal Facilities Fund
2. Public Safety Facilities Fund
3. Park and Recreation Facilities Fund
4. Storm Drain Facilities Fund
5. Potable and Recycled Water Facilities Fund
6. Sewer Facilities Fund

B. These funds, and interest earned thereon, if any, shall be expended solely for construction and/or acquisition of the corresponding public facilities shown in a study justifying the fees or a capital improvement or similar master facility plan, or for reimbursement for construction and/or acquisition of those public facilities or as provided in the resolution establishing such fees.

Sec. 70-72. Payment of fees.

The fees established pursuant to authority of this Article shall be paid for the property on which a development project is proposed at the time of the issuance of any required building permit, except as otherwise provided below:

A. Fees imposed on residential development shall be collected in accordance with the provisions of California Government Code Section 66007 and 66013, as the same presently exists or may hereafter be amended from time to time.

B. Unless otherwise stated in this Article, applicants shall pay fees at time of certificate of occupancy.

C. Live/work units, up to 1,200 square feet shall be allowed to use the second tier category of 501 -14,999 square feet.

D. Accessory Dwelling Units over 750 square feet shall be charged a proportional amount based on the primary structure on-site.

Sec. 70-73. Development Fee Credits.

A. The owner of a parcel of property otherwise required to pay a fee under this Article may receive a credit for the corresponding development fee when that owner constructs or donates a facility, or a portion thereof, identified in a study justifying the fees or a capital improvement or similar master facility plan, regardless of how it may be financed, that serves the owner's parcel or parcels. The development fee credit shall offset, on a proportionate basis without interest, the corresponding development fee to be paid pursuant to this Article. The facility must be built in compliance with all applicable laws governing the construction of public improvements.

B. The amount of the development fee credit shall equal the City's most recent estimated cost of constructing and/or furnishing the facility, or the portion of the facility actually completed or purchased, by contract or utilizing City forces.

C. The owner of a parcel of property may be further entitled to a development fee credit where the City determines, on a case-by-case basis, that the construction of the facility, or a portion thereof, will be necessary to provide basic services to the entire City even though it does not directly serve the owner's project or is of greater capacity than that required to serve the owner's project adequately.

D. The amount of the development fee credit shall be determined after inspection and acceptance of the facility at the time of payment of the corresponding facilities fee.

E. Reserved.

F. To the extent that an owner is granted a development fee credit, such owner shall not be entitled to a future reimbursement for such facility, as applied to a different development project.

G. A development fee credit is an obligation of the City that runs with the land and inures to the benefit of each successor in interest of the original landowner until full credit has been received.

H. A developer shall also be entitled to a credit if the City and developer have executed an agreement or there is a preexisting ordinance which specifically exempts the developer from the payment of one or more of the fees enacted under this Article. The availability of the credit and its amount shall be determined by the City on a case-by-case basis based on the provisions of the applicable agreement.

Sec. 70-74. Reimbursement.

A. The owner of a parcel of property otherwise required to pay a development fee will be entitled to enter into a reimbursement agreement to reimburse

from subsequently collected development fees the direct and verifiable costs of installing or furnishing public improvements, or portions thereof, identified in the study justifying the fees or a capital improvement or similar master facility plan where all of the following conditions are satisfied:

1. The owner has constructed a public improvement, or portion thereof, that is identified in the appropriate a study justifying the fees or a capital improvement or similar master facility plan.
2. The City required that the public improvement be constructed to contain supplemental size, capacity, number or length for the benefit of property not within the owner's project.
3. The City approved, prior to construction or furnishing, the proposed budget for the project and finds any change to that budget fair and reasonable.
4. The public improvement, or portion thereof, has been dedicated to the public.
5. The public improvement, or portion thereof, has been built in compliance with all applicable laws governing the construction of public works.

B. The City shall not reimburse the owner for costs related to financing any public facility.

C. An owner shall only be entitled to reimbursement to the extent that any public facility project benefits property not within the owner's project. Thus, an owner may receive a development fee credit as for the portion of a public facility that serves the owner's project and reimbursement for the oversized or extra-capacity or extended portion of a public facility that benefits subsequently developed property.

D. In no event shall an owner receive a development fee credit and/or reimbursement in excess of the City's most recent estimated cost of constructing the facility, or the portion of the facility actually completed, by contract or by utilizing City forces.

E. Any reimbursement agreement entered into under this Article shall require the City, for a period of up to fifteen years, to reimburse the owner from the proceeds of the development fees collected from owners of new projects that directly benefit from the facilities financed by the fees and which are the subject of the reimbursement agreement. Reimbursement shall only be made from fees actually collected to fund improvements which are of the same type as the improvement constructed by the owner, and from no other source. The terms of the reimbursement shall be set forth in the reimbursement agreement.

Sec. 70-75. Deferrals & Waivers.

The City Council is empowered to grant a waiver of fees for units constructed as part of an inclusionary housing project complying with the City's Inclusionary Housing Ordinance. In addition, the City Council may establish a program to defer fees for rental housing projects that include 100% affordable units for low and very low income households. Such deferral shall require the execution of an agreement acceptable to the City that contains terms to guarantee the final payment of the fees deferred.

Sec. 70-76. Refund of fees paid.

A. If a building permit expires without commencement of construction, then the fee payer shall be entitled to a refund, without interest, of the development fee paid as a condition for its issuance, except that the City shall retain one percent of the fee to offset a portion of the costs of collection and refund. The fee payer must submit an application for such a refund to the Development Director within thirty calendar days of the expiration of the permit. Failure to timely submit the required application for refund shall constitute a waiver of any right to the refund.

B. In the event any fee collected pursuant to this Article remains unexpended or uncommitted in any fund established pursuant to this Article five or more years after deposit of the fee, the City shall make findings once each fiscal year to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

C. The unexpended or uncommitted portion of the development fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to subsection B of this section shall be refunded to the then-current record owner or owners of lots or units of the development project or projects on a prorated basis.

D. The provisions of California Government Code Sections 66001(d), (e) and (f) shall apply fully to any refund of fees remaining unexpended or uncommitted in any such City fund for five or more years after deposit, and the provisions of subsections B and C of this section shall be subordinate to the section and shall be applied consistent therewith.

Sec. 70-77. Application to Subsequently Annexed Land.

As areas not presently situated within the City boundaries seek to annex to the City, the City Council shall determine the benefit to such land areas of the public facilities and infrastructure funded by this Article. The City Council shall impose development fees, in whole or in part, as established by this Article, upon such annexed areas to the extent necessary to assure that such areas pay their fair share of the actual costs of all necessary public facilities and infrastructure benefitting their projects, unless the City Council determines that such an imposition would cause inequities or that a better or fairer financing arrangement can and should be developed.

Sec. 70-78. Traffic signal and control devices.

A traffic signal and control device development program is hereby ordered and adopted pursuant to the following guidelines:

(1) *Development priorities.* The City Council shall annually establish a priority list of intersections eligible for construction of traffic signals. The City Council may authorize, as funding and needs dictate, the construction of signal control devices at any location included on the priority list.

(2) *Traffic signal and control device construction fee.* A traffic signal and control device construction fee is hereby established which shall be collected from all land developers in the City prior to the issuance of any building or public works permit by the City according to the resolution set forth by the City Council and incorporated by reference in this section.

(3) *Fee schedule basis.* The basis for the fee schedule in the resolution shall be the ratio of the traffic generated by the development for which a particular permit is requested compared to the traffic volume identified in the minimum Cal. Trans. warrant for a traffic signal in an urban area, multiplied by the average cost of a traffic signal system. The fee schedule is based, more specifically, on the following factors:

a. *Generated traffic.* Traffic generated by each development shall be calculated from the latest traffic generation data promulgated in the publication entitled "Trip Generation" (current edition), an information report as prepared by the Institute of Transportation Engineers.

b. *Minimum signal warrant.* The traffic volume equivalent to the minimum Cal. Trans. warrant for a traffic signal in an urban area shall be 12,800 vehicles per day from all approaches.

c. *Average traffic signal cost.* The average cost of a traffic signal shall be \$150,000.00.

(4) *Traffic signal and control device fund.* The fees required pursuant to this section shall be paid to the City and deposited into a separate traffic signal and control device fee fund. Moneys in this fund shall be expended solely for the construction or reimbursement for construction of traffic signals and control devices or to reimburse the City for the cost to design and construct such facilities.

Sec. 70-79. Road and highway improvement.

A road and highway improvement program is hereby ordered and adopted in order to implement the City's capital facilities needs and to mitigate the various impacts caused by development projects within the City. The program shall be operated pursuant to the following guidelines:

(1) *Road and highway improvement fee.* A road and highway improvement fee is hereby established which shall be collected from all land developers in the City prior to the issuance of building or public works permits. The fee amount shall be as periodically set by resolution of the City Council.

(2) *Fee schedule basis.* The basis for the fees charged as shown in the City Council resolution shall be based on the traffic generated by the development for which a particular permit is requested. The fee represents the fair share cost of constructing the necessary public facilities outlined in the five-year capital improvement program. The traffic generated by each development shall be calculated from the latest generation data promulgated in the publication entitled "Trip Generation" (current edition), an information report as prepared by the Institute of Transportation Engineers.

(3) *Road and highway improvement fund.* The fees required pursuant to this section shall be paid to the City and deposited into a separate road and highway improvement fund. Moneys in this fund shall be expended solely for the construction or reimbursement for construction of road improvements, streetscapes and streetlights as shown in the five-year capital improvement program.

Sec. 70-80. Parks and recreation improvement.

(a) A parks and recreation improvement program is hereby ordered and adopted. This section is enacted pursuant to the authority granted by Government Code § 66477. The purpose of this section is to provide for the development of park and recreation facilities through subdivision regulations. Each person constructing any new dwelling unit, habitation unit or space for a mobile home in the City shall dedicate lands or pay fees in lieu thereof or a combination of both for park and recreational purposes. Dedication requirements shall be conveyed to the City concurrent to recordation of the final map or prior to issuance of building permits. In-lieu fees shall be paid to the City prior to issuance of building permits.

(b) Land dedication figures per dwelling unit and in-lieu fees per dwelling unit shall be based on a ratio of three acres of park per 1,000 persons pursuant to Government Code § 66477(b). The number of persons per dwelling unit shall reflect the most recent department of finance figures. The actual amount of land dedication or fee amount shall be as periodically set by resolution of the City Council.

(c) The fees required pursuant to this section shall be paid to the City and deposited into a separate park improvement fund. Moneys in this fund shall be expended solely for the construction or reimbursement for construction of park improvements or to reimburse the City for the cost to design and construct such facilities, in accordance with Government Code § 66477. .

Sec. 70-81. Public safety improvement program.

(a) *Established.* A public safety improvement program is hereby ordered and adopted in order to implement the City's capital facilities needs for public safety services. The needs are shown in the five-year capital improvement program.

(b) *Public safety improvement fee.* A public safety improvement fee is hereby established which shall be collected from all land developers in the City prior to the issuance of building or public works permits. The fee amount shall be as periodically set by resolution of the City Council.

(c) *Public safety improvement fund.* The fees required pursuant to this section shall be paid to the City and deposited into a separate public safety improvement fund. Moneys in this fund shall be expended solely for the construction or reimbursement for construction of public safety improvements as shown in the five-year capital improvement program.”

SECTION 4. Section 62-399(b) of the Pomona Municipal Code is hereby amended to read as follows:

“(b) Every applicant for a new connection to the sewer service operated by the City of Pomona, Utility Services Department, shall pay to the utility services department a connection fee for such new service as set by resolution of the City Council. Such fee shall not be applicable as to any parcel where the applicant or their predecessor in interest previously paid such fee to the utility services department for such parcel.”

SECTION 5. The City Clerk shall attest and certify to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law and this Ordinance shall take effect thirty (30) days after its final adoption.

SECTION 6. If any section, subsection, sentence clause or phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Pomona hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence clause or phrase or word not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

PASSED, APPROVED AND ADOPTED this 2nd day of August, 2021.

CITY OF POMONA:

Tim Sandoval
Mayor

APPROVED AS TO FORM:

ATTEST:

Sonia Carvalho
City Attorney

Rosalia A. Butler, MMC
City Clerk

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, ROSALIA A. BUTLER, MMC, CITY CLERK of the City of Pomona do hereby certify that the foregoing Ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on July 19, 2021 and was adopted at second reading at a regular meeting of the City Council of the City of Pomona held on August 2, 2021 by the following vote:

AYES: Garcia, Lustro, Preciado, Sandoval
NOES: Nolte, Ontiveros-Cole, Torres
ABSENT: None
ABSTAIN: None

Rosalia A. Butler, MMC
City Clerk