

## Redline

### Chapter 17.90 – Public Facilities Impact Fees and Schedule of Fees

#### 17.90.010 - Additional authority.

This chapter authorizes the county to establish, impose, and collect public facilities impact fees, also known as public facilities fees, capital facilities fees, or development impact mitigation fees, as a requirement of the county, or a relevant city, as applicable, before the county or such city, as applicable, issues a building permit for construction with respect to development. Such authority of the county is separate from and in addition to the authority of the county under Chapter 17.88 of this code, entitled “Public Facilities Fees” with respect to public facilities fees, and any other authority of the county under this code or the law. Nothing in this chapter obligates the county to establish fees. But if the county has established fees under this chapter, then such fees shall remain established until proceeds of those fees have been used as provided in section 17.90.080.

#### 17.90.020 - Purpose and findings.

- A. The purpose of this chapter is to provide for authorize the adoption and establishment, imposition, and collection of public facilities impact fees that areas may be needed to mitigate adverse impacts caused by new development within the cities and in the unincorporated areas of Fresno County upon county public facilities. The Such fees are needed, and will if established, shall be used, to maintain certain minimum standards of the types of county public facilities that are described in the relevant impact fee report (as defined herein). Such minimum standards do shall not exceed the actual standards of such types of facilities, respectively, that existed as of calendar year 2005 the date of the relevant impact fee report. Such fees are may be imposed established pursuant to this chapter so that each new development pays its fair share toward the costs of such facilities needed to serve the growing population resulting from such new development. This chapter also sets forth the procedures for the collection of such fees at the time, and as a requirement, of the issuance of building permits for construction relative to such fees.
- B. The board finds, determines, and declares as follows:
1. Fees may be established under this chapter when the board finds: (a) County public facilities are not available to accommodate the needs caused by new development within Fresno County, which results in inadequate county public facilities within Fresno County; (b) The public health, safety, peace, morals, convenience, comfort, prosperity and general welfare of all residents and workers, respectively, within the cities and the unincorporated areas of Fresno County will be promoted by the board’s adoption establishment of public facilities impact fees, as provided in this chapter, for additional and expanded county public facilities, and for refurbished county public facilities, needed to maintain the minimum standards of the types of county public facilities that are described in subsection A of this section; and (c) Failure of the board to adopt establish and of the county to impose public facilities impact fees on new development will subject all Fresno County residents and workers, respectively, in Fresno County to continually decreasing standards of county public facilities serving those residents and workers, and therefore, resulting in conditions that are perilous to their health and safety and general well being.

2. Title 7, Division 1, Chapters 5 through 9 (commencing with Section 66000) of the California Government Code, entitled the Mitigation Fee Act, provides that public facilities impact fees may be adopted and imposed on new development by local agencies, including a county. Public facilities impact fees authorized under such statutes are hereby authorized ~~and implemented~~ under this chapter by the county for financing county public facilities as provided herein.
3. The board's adoption of this chapter is consistent with the Policy Document of the County General Plan Update adopted by the board on October 3, 2000 (the "2000 General Plan Update"), which states the following with respect to county public facilities: "(t)he County shall require that new development pays its fair share of the cost of developing new facilities ..." (Policy PF-B.1) and "(t)he County shall develop and adopt ordinances specifying acceptable methods for new development to pay for new capital facilities ... Possible mechanisms include development fees, ..." (Policy PF-B.B).
- ~~4. On June 14, 2005, the board continued to express concern that new development in Fresno County has been placing increasing demands on a variety of county public facilities that the county cannot meet. To that end, new development has not borne its fair share of the costs of developing or otherwise providing additional, expanded, and refurbished (as provided in this chapter) county public facilities.~~
- ~~5. As a result, on June 14, 2005, the county engaged MuniFinancial, experts in the study and analysis of public facilities impact fees, to identify the needs for additional, expanded, and refurbished (as provided in this chapter) county public facilities caused by new residential and nonresidential development in Fresno County, and to advise the county on appropriate means of recovering the costs of those needed public facilities. Pursuant to that engagement, MuniFinancial conducted a detailed study, undertook a comprehensive analysis, and prepared a written report for the county, entitled "Fresno County Public Facilities Impact Fees," dated February 17, 2006 (the "2006 impact fee report"), and further conducted a study and undertook an analysis, and prepared a memorandum for the county, dated March 6, 2008, with respect to such report (collectively, the 2006 impact fee report and the memorandum are the initial "impact fee report"), which initial impact fee report is incorporated herein by this reference as though it were fully set forth below.~~
- ~~6. On April 19, 2007, the county planning commission held a duly noticed public meeting at which members of the public, including representatives of the building industry, and representatives of the cities, provided both oral and written comments to the county with respect to the proposed fees and a draft form of the 2006 impact fee report, and on July 10, 2007, the board conducted a duly noticed public workshop concerning such matters, and again members of the public, including representatives of the building industry, and representatives of the cities, provided both oral and written comments to the county with respect to such matters. In light of such public meeting and workshop, extensive public comments and input were given, and considered by the board, the director, and county staff in the development of this chapter.~~
47. The county ~~has~~ shall provided all advance publications and any other public notices, and conducted all public meetings and hearings, required by law with respect to the board's proposed adoption-establishment of fees under this chapter. The initial relevant impact fee report and any other data with respect to the board's proposed

~~adoption establishment~~ of fees under this chapter ~~have been~~shall be on file with the clerk ~~to of~~ the board and ~~have been~~shall be made available for public inspection at and during the normal office hours of the clerk ~~to of~~ the board at least ten calendar days prior to the board's first public reading of any amendment to this chapter for purposes of the board ~~adopting establishing fees under~~ this chapter. All such publications, notices, and availability of such information and data ~~were that are~~ undertaken or provided for the purposes of the board ~~adopting establishing fees under~~ this chapter, and all testimony and other oral or written information provided by anyone else, including members of the public, ~~have been~~shall be duly considered by the board at such public meetings and hearings, prior to the board ~~adopting establishing fees under~~ this chapter.

58. The ~~initial-relevant~~ impact fee report shall identify~~ies~~ a number of categories of the types of county public facilities for which new development triggers the county's needs for public facilities to maintain the minimum standards of the types of county public facilities that are described in subsection A of this section. The ~~initial-relevant~~ impact fee report shall estimate~~s~~ the county's public facilities needs based on demand of such facilities by population as of ~~calendar year 2005~~the date of the relevant impact fee report. The population analyzed and the resulting estimated county public facilities needs ~~are~~shall be reasonable and consistent with the board's knowledge of and experience in county affairs.

~~9.—The county's public facilities needs assessed in the initial impact fee report are conservative, since they are based on providing the minimum standards of county public facilities that existed as of calendar year 2005 to an increasing population within the cities and the unincorporated areas of Fresno County. County public facilities needs have grown with such population increases in the past, and will continue to grow as such population increases in the future. New residents and workers will likely require the same types of county public facilities as the county provided to residents and workers as of calendar year 2005, and continuing thereafter through and after the time that the board adopts this chapter.~~

~~610.~~ ~~There are no identified e~~Existing deficiencies in county public facilities ~~that would~~may not be financed by ~~the any~~ fees imposed under this chapter.

744. The ~~initial-relevant~~ impact fee report shall fairly allocate~~s the~~ fees, in general, equally within and among the different cities, and shall fairly allocate~~s~~ additional costs to unincorporated areas of Fresno County for the same types of countywide public facilities furnished in those areas.

842. The ~~initial-relevant~~ impact fee report shall fairly identify~~ies~~ the types of county public facilities that are affected primarily by new residential development, ~~such as health and human services facilities, and library facilities~~. It also shall fairly allocate~~s~~ among new residential development and new nonresidential development within Fresno County the costs of providing additional, expanded, and refurbished (as provided in this chapter) county public facilities needed as a result of such new residential development and new nonresidential development within the cities and the unincorporated areas of Fresno County.

943. The ~~initial-relevant~~ impact fee report shall fairly reflect~~s~~ the county's public facilities needs that are generated by new residents and workers, respectively, who result from

new development within the cities and the unincorporated areas of Fresno County. The initial-relevant impact fee report shall reasonably apply residential densities and employment densities for different land uses in calculating the fees. The fees shall fairly represent the variations in resident and worker demand for types of county public facilities. The variation of the fees among new residential development and new nonresidential development, if any, is shall be reasonable, and is shall not be large enough to make the fees unreasonable for particular projects within each category.

104. ~~The fees imposed under this chapter do shall~~ not exceed the corresponding amounts for fees set forth in the initial-relevant impact fee report. The amounts of the fees to be charged under this chapter are shall be approved and adopted by the board in this chapter, based upon the results and careful consideration of the detailed information and analyses provided in the initial-relevant impact fee report, which shall specifically ~~identifies-identify~~ the purpose of the fees, the uses to which the fees may be put, and the categories of types of county public facilities for which the fees may be expended. The initial-relevant impact fee report shall properly sets forth findings and determinations that there is a reasonable relationship between the fees' use and the type of new development on which the fees are imposed, and shall also properly sets forth findings and determinations that there is a reasonable relationship between the need for county public facilities and the type of new development on which the fees are imposed, ~~all of which findings and determinations the board hereby adopts as findings and determinations of the board.~~
115. ~~To the extent that it may be relevant to this chapter, t~~he initial-relevant impact fee report shall properly sets forth findings and determinations that there is a reasonable relationship between the amount of the fees and the costs of the county public facilities, or portion(s) thereof, attributable to the new development on which the fees are imposed, which findings and determinations the board ~~hereby shall~~ adopts as findings and determinations of the board. To that end, (a) the costs in the initial-relevant impact fee report estimated for constructing or acquiring county public facilities are shall be reasonable in light of: (1) the board's knowledge of and experience with planning, designing, constructing, and acquiring county public facilities, and (2) ~~the board regards~~ the assumptions in the initial-relevant impact fee report for the minimum standards of county facilities as being conservativerational; for example, higher costs are shall be appropriately assigned to certain county public facilities, such as criminal justice facilities, including jails, in contrast to lower costs, which are appropriately assigned to other county public facilities, such as administrative offices; and (b) the total fees for a proposed development is shall be based on the size of that development measured by the appropriate standard in the initial-relevant impact fee report—i.e., number of dwelling units for new residential development, and building square feet for new nonresidential development. Consequently, ~~the any~~ schedule of fees set forth in Schedule A codified at the end of this chapter (see Section 17.90.060 herein) shall ensures a reasonable relationship between the fees for a development and the costs of the county public facilities attributable to that development.
126. This chapter properly limits uses of all fees collected to additional, expanded, and refurbished (as provided in this chapter) county public facilities attributable to new development, and further limits uses of the fees to specific categories of types of such county public facilities unless and until subsequent evidence, as determined by the board, justifies reallocation.

137. Fees collected under this chapter ~~will~~shall go toward financing certain types of county public facilities through which countywide services are provided. The ~~most conservative~~ judgment of the board ~~supports~~shall support the finding that county public facilities of at least the type provided for by this chapter will be needed while ~~the~~ fees are being imposed and collected. ~~It is not possible, at the time that the board adopts this chapter to specify the location of each individual county public facility to be financed by the fees. In any event, a tentative attempt to specify the potential location, schedule, or design of all needed county public facilities would not materially affect the amount of the fees, since neither the need for such county public facilities, nor the services to be provided in those facilities, will generally be geographically differentiated. Nonetheless, if such an attempt were made, it would add significantly to the delay and expense of implementing fees, adversely affecting applicants, those persons receiving services at such needed county public facilities to be financed by the fees, and county taxpayers in general.~~
148. New development within cities ~~will cause~~causes significant demand for additional, expanded, and refurbished (as provided in this chapter) county public facilities~~in the identified categories set forth in the initial impact fee report~~. The county has incorporated into the 2000 General Plan Update a fundamental policy directive that intensive new development within Fresno County should be directed to cities, unincorporated communities, and other areas where public facilities and infrastructure are available (2000 General Plan Update, Urban Development, p. 2-33). Substantially greater new development outside the existing cities, in particular, would cause undesirable loss of productive agricultural land and lead to inferior public services.
159. The cities do not provide the needed county public facilities ~~identified in the initial impact fee report, since~~when the county is required to be the provider of the services to persons who uses those facilities.
1620. New development within the cities should pay a fair share toward the costs of additional, expanded, and refurbished (as provided in this chapter) county public facilities that are needed to serve such development. Otherwise, the costs of those public facilities will be inequitably borne by other county taxpayers, specifically those residing in the unincorporated areas of Fresno County, or will inequitably require the county to reduce the standards of facilities and levels of service provided to current Fresno County residents and workers in Fresno County.
1724. In order to recover its costs resulting from new development within cities, the county must exercise authority over that development solely to the extent of requiring payment of the fees, as provided by this chapter.
1822. The purposes of ~~the~~ fees ~~required by, established, imposed,~~ and collected under this chapter ~~are~~shall be to finance costs of additional, expanded, and refurbished (as provided in this chapter) county public facilities used to provide countywide public protection facilities, general governmental facilities, ~~library facilities, health and human services facilities, sheriff's patrol and investigation facilities, and county parks and open space facilities,~~ including administration charges related to such fees, as provided further in this chapter, all of which are further described in the ~~initial~~relevant impact fee report.

1923. Fees ~~established, imposed, and~~ collected under this chapter ~~are to~~shall be used to determine the need for, plan, design, develop, construct, carry to completion, equip, furnish, acquire, expand, refurbish (as provided in this chapter), improve, and add public facilities for the county, the types of which facilities are described in subsection (B)(~~2218~~) of this section, and to pay for administration charges related to such fees, as provided further in this chapter.

2024. New residential development and new nonresidential development bring additional residents and workers into Fresno County. Those residents and workers (except as otherwise specified in the ~~initial-relevant~~ impact fee report, in which cases, new development ~~is shall~~ not ~~be~~ charged fees under this chapter) will need the types of county public facilities described in subsection (B)(~~2218~~) of this section.

2125. Adoption of this chapter does not have the potential to cause a significant effect on the environment. This chapter does not authorize new development or require it. Rather this chapter provides that if and when new development is approved, under whatever laws and policies otherwise then are in effect, such development ~~will~~may be subject to ~~the~~fees under this chapter for financing county public facilities. This chapter does not approve or foreordain approval of any county public facilities nor mandate or alter the standards of county public facilities to be constructed or otherwise provided. Therefore, further review of this chapter under the California Environmental Quality Act (“CEQA”), California Public Resources Code, Sections 21000 et seq. is not required.

2226. This chapter is not a “project” under CEQA, pursuant to subdivision (b)(4) of Section 15378 of the CEQA Guidelines, Title 14 of the California Code of Regulations (“CEQA Guidelines”), because this chapter is the creation of a governmental funding mechanism which does not involve any commitment to any specific project, which may result in a potentially significant physical impact on the environment.

2327. This chapter also is exempt from review under CEQA pursuant to subdivision (b)(8) of California Public Resources Code, Section 21080, and Section 15061 and subdivision (a)(4) of Section 15273 of the CEQA Guidelines, because this chapter only provides for the establishment or approval of a county rate or charge for obtaining funding for capital projects necessary to maintain county services within existing service areas. This chapter does not contemplate, identify, or approve expansion of the area for which county services are provided.

- C. The board further finds, determines, and declares as follows, in connection with an applicant’s lawful use of its credit card or debit card to pay ~~the~~fees, as provided in Section 17.90.060(B) herein:
1. The board is the governing body of the county having fiscal responsibility for the county for purposes set forth herein.
  2. An applicant’s lawful use of its credit card or its debit card to pay ~~the~~fees, as provided in Section 17.90.060(B) herein, promotes an efficient and effective means of collecting the fees, and further promotes saving an applicant’s time and travel to pay the fees to the county or a relevant city, at their offices, respectively, and reduces the use of vehicles, which generally benefits the environment.

**17.90.030 - Definitions.**

As used in this chapter:

- A. "Applicant" means any person, firm, corporation, or entity seeking approval of development, including issuance of a building permit for construction, by the county for any development, including construction, within the unincorporated areas of Fresno County, or by a relevant city for any development, including construction, within such city, respectively.
- B. "Board" means the board of supervisors of the county.
- C. "Capital improvement plan" means a plan adopted, or updated from time to time, by resolution of the board which indicates, to the extent that such information is determined by the county, the approximate location, size, time of availability, and estimates of costs for those county public facilities, including public improvements, that may be financed in whole or in part with ~~the~~ fees.
- D. "Card issuer or processor" means a credit card or debit card payment processor or clearinghouse, a credit card or debit card issuer, or a company responsible for any payment in connection with the use of a credit card or a debit card, or, with respect to a credit card, a purchaser of a credit card draft, or any agent of any of the foregoing, which directly or indirectly provides or arranges for any payment or other related services to accomplish an applicant's lawful use of its credit card or debit card to pay ~~the~~ fees, as provided in Section 17.90.060(B) herein.
- E. "City" or "cities" means a city or cities, which is any one, or all as the case may be, of the cities located with Fresno County, however constituted, organized, or existing under the constitution and laws of the state of California, which has or have one or both of the following: (1) entered into a city-county MOU; or (2) adopted an ordinance (including any amendments thereto) which is consistent with the terms of such city's city-county MOU, imposing and authorizing the collection of ~~the~~ fees, in the specific amounts set forth in the applicable schedule of fees, herein, for and on behalf of the county within such city as a requirement of issuing a building permit for construction within such city.
- F. "City-county MOU" means a written agreement (including any amendments thereto) then in effect by and between a relevant city and the county containing a provision or provisions requiring such city either to collect ~~the~~ fees within such city for and on behalf of the county, or to require the applicant to present a voucher evidencing the full payment of such fees directly to the county, herein, according to the terms of such agreement.
- G. "Construction" means any work that includes, but is not limited to, erection, enlargement, or installation of any residential development, including single-family residential dwelling units and multifamily residential dwelling units, or of any nonresidential development, including, but not limited to, retail, office, industrial or warehouse buildings or improvements, as defined in the applicable building and/or zoning ordinances of each city, and in the building and/or zoning ordinances of the county. Construction includes reconstruction of construction, unless it is exempt construction.
- H. "Convenience fee" means a monetary charge, as more fully described in Section 17.90.090(B) herein, which includes the cost that a card issuer or processor will charge to an applicant for the applicant's convenience of using a credit card or a debit card to pay ~~the~~ fees, pursuant to the card payment program referred to in Section 17.90.060(B) herein.

- I. "County" means the county of Fresno, a charter county organized and existing under the constitution and laws of the state of California.
- J. "County auditor" means the auditor-controller/treasurer-tax collector of the county.
- K. "County fiscal year" means July 1st through and including the immediately following June 30th.
- L. "Department" means the county department of public works and planning, or its successor county department or agency responsible for administering the building of additional, expanded, and refurbished (as provided in this chapter) county public facilities.
- M. "Development" means any project undertaken for the purpose of development, including, but not limited to, any residential development, further including but not limited to, single-family residential dwelling units or multifamily residential dwelling units, or any nonresidential development, further including, but not limited to, retail, office, industrial or warehouse buildings or improvements. "Development" includes a project involving the issuance of a building permit for construction.
- N. "Director" means the director of the department.
- O. "Exempt construction" means any of the following: (1) construction for which a building permit was issued prior to the effective date of this chapter; (2) construction qualifying as a detached building or structure intended for exclusive agricultural uses, which will not be fully enclosed on at least one side (e.g., three-sided barn, with no door, gate, or other means of enclosure on the fourth side), and will not be on commercial or industrial zoned land, or on land where a land use application has been approved for use as a commercial or industrial use; provided however, a building or structure constructed under this provision shall not be used as a place of human habitation, employment, processing of farm products, or for private or public admittance; employees removing and returning farm equipment, farm crops and supplies, or the feeding of poultry, livestock or similar animals may be permitted; (3) construction for local governmental entities intended to be occupied solely by those or any other local governmental entities, or both; (4) residential construction that does not create any separate dwelling unit or units on a lot; (5) construction for the erection or installation of any temporary building, structure, or improvement (i) which, under the terms of any permit issued therefor or pursuant to such other assurance as the appropriate county or city official (i.e., the director, or his or her designee, for construction in the unincorporated areas of the county, or city building official for construction in the relevant city, respectively) may require, may be maintained for a total period not to exceed one year, or (ii) for use in the performance of the work of a construction project until completion of such work; (6) construction in conformity with a final subdivision map, including a vesting final map or a nonvesting final map, which, prior to the effective date of this chapter, was first approved by the local agency having jurisdiction over such matter, provided however, the provisions of this subsection shall only apply to any such a map until the date that is five years following the effective date of this chapter; (7) construction in conformity with an unexpired vesting tentative subdivision map approved by a local agency having jurisdiction over such matter, where the application to such local agency for such map was deemed complete by such local agency prior to the effective date of this chapter; (8) construction in conformity with an unexpired nonvesting tentative subdivision map approved by a local agency having jurisdiction over such matter, where the application to such local agency for such map was deemed complete by such local agency prior to the effective date of this chapter; provided

however, the provisions of this subsection shall only apply to any such a map until the date that is five years following the effective date of this chapter; (9) construction in conformity with a vesting final subdivision map, recorded in the office of Fresno County recorder, based on an unexpired vesting tentative subdivision map qualifying under subsection (O)(7) herein, provided however, the provisions of this subsection shall only apply to any such vesting final subdivision map until the date that is the later of: (i) five years following the effective date of this chapter, or (ii) the expiration of the time period for vested rights conferred under final vesting subdivision maps, as provided by law, including Government Code, Section 66498.5; (10) construction in conformity with an unexpired site plan review, including a plan review, where the approval for such site plan review or plan review was given by such local agency prior to the effective date of this chapter; provided however, the provisions of this subsection shall only apply to any such a site plan review or plan review until the date that is five years following the effective date of this chapter; and (11) construction for a proposed residential subdivision that is otherwise covered by a development agreement then in effect by and between the county and a developer under California Government Code, Sections 65864 et seq., which provides for payments by the developer to the county to finance county public facilities, and expressly prohibits the imposition of ~~the~~ fees under this chapter.

- P. "Fee" or "fees" means a monetary exaction to be charged by, or for and on behalf of, the county upon development, pursuant to this chapter, in connection with the county's or a relevant city's approval of, or issuance of a building permit for construction with respect to, a development for the purpose of defraying certain costs (or a portion thereof), based on the relevant impact fee report, of county public facilities related to that development.
- Q. "Fee review committee" means a county committee consisting of the county administrative officer, or his or her designee, who shall be the chairperson of the fee review committee, the county's director of the department of general services, or his or her designee, and the county auditor, or his or her designee.
- R. "Low or moderate income residence" means: (1) a single-family residence that is to be sold to, and occupied as the primary residence by, persons whose total household income does not exceed eighty percent of the then-current area median income for Fresno County, as determined by the United States Department of Housing and Urban Development ("HUD"), at the time that the county has qualified such persons as an owner or as a prospective owner of a single-family low to moderate residence, and which shall have, at such time, a maximum actual or expected value, established by HUD, which shall not exceed ninety-five percent of the then-current Federal Home Loan Administration mortgage limits for Fresno County, (2) a multifamily residence, at the time that the owner of the affected property enters into the relevant security contract for such multifamily residence, and at all times thereafter during the term of such security contract: (i) is to or shall be rented to and occupied by persons whose total household income does not exceed eighty percent of the then-current area median income for Fresno County, as determined by HUD, and (ii) is to or shall have a rental rate that does not exceed thirty percent of such renters' then-current total household income, provided however, if such multifamily residence, during any portion of any county fiscal year while such security contract is in effect, is subject to rental rate restrictions by a local, state, or federal governmental agency providing financing assistance for the construction of such residence that are greater than the rental rate restriction set forth in this clause (2)(ii) of this subsection, such greater (or greatest, if there are more than one) rental rate restrictions of such local, state, or federal governmental agency shall apply to such rental rate during such county fiscal year while such security contract then is in effect, or (3) a multifamily residence, at the time that owner of the affected property enters into the

relevant security contract for such multifamily residence, and at all times thereafter during the term of such security contract, that is one of the units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least forty-nine percent of the total units are reserved for occupancy by lower income households, as further provided in subdivision (b)(1) of California Government Code Section 66007.

- S. "Public facility" means and includes, but is not limited to, land, buildings, public improvements, community amenities, and furnishings, equipment, and other facilities referred to in the relevant impact fee report.
- T. "Security contract" means a fully-executed written contract together with any related instruments, including any fully-executed amendments thereto, as applicable, that are then in effect by and between the county and an owner of a property in question, securing such property owner's full payment of ~~the~~ fees payable under this chapter to the county, and that shall be recorded in the office of Fresno County recorder as a lien against such property prior to and as a requirement for the county's or a relevant city's issuance of a building permit for construction of a low or moderate income residence, as provided in Section 17.90.060(E) herein. The documents constituting a security contract may include, but shall not be limited to, a written agreement between the county and the affected property owner for the county to conditionally defer the payment of ~~the~~ fees according to its terms and conditions, a promissory note executed by the affected property owner to pay the conditionally deferred fees to the county according to its terms and conditions, and a deed of trust granted by the property owner for the benefit of the county, which secures the payment of the conditionally deferred fees when they are due and payable to the county according to the terms and conditions of such agreement and promissory note, and such deed of trust. For any security contract that may be between the county and a developer of a single-family low or moderate income residence, the reference in this subsection to an owner of a property in question shall include and mean such developer and any person or persons who the county has qualified as a prospective owner of a single-family low to moderate residence to be sold by such developer to such person or persons.

#### **17.90.040 - Authorization for construction and requirement for ~~the~~ fees.**

- A. Upon and continuing at all times after the effective date of this chapter while fees are established under this chapter, all construction within all of the cities and all of the unincorporated areas of Fresno county, that is not otherwise exempt construction (unless a security contract provides for conditional deferral of the payment of any fees pursuant to ~~subdivision-subsection E-~~ of section 17.90.060~~-~~, herein, for a low or moderate income residence, or the applicant has paid under protest the full amount of ~~the~~ fees, under ~~subdivision-subsection F-~~ or ~~G-~~, as applicable, of section 17.90.060~~-~~, herein, or a city or the county issues a building permit for construction within such city or the unincorporated area, respectively, during the "temporary suspension of fee collection," as provided in ~~subdivision subsection B-~~ of this section) shall be subject to, and all fees shall be paid by the applicant to the county in the full amounts of ~~the~~ fees established in, and from time to time updated and increased pursuant to, this chapter. Except as otherwise expressly provided in this section, and in sections 17.90.060~~-~~ and 17.90.070~~-~~, herein, such fees shall be paid in full and collected as provided in this section and in sections 17.90.060~~-~~ and 17.90.070~~-~~, herein. Development, including construction, shall not otherwise be regulated under this chapter.

B. Notwithstanding anything to the contrary in ~~subdivision-subsection A-~~ of this section, and in sections 17.90.060 and 17.90.070, herein, (i) an applicant for a building permit for construction within any of the cities or any of the unincorporated areas of Fresno County shall not be required to pay any ~~of the fees in-under~~ this chapter for any such building permit issued by any of the cities or the county, respectively, during the period commencing upon November 10, 2010, and continuing at all times thereafter until November 9, 2012 (the "First Temporary Suspension of Fee Collection"), or during the period commencing upon November 10, 2012, and continuing at all times thereafter until November 9, 2015 (the "Second Temporary Suspension of Fee Collection"), or during the period commencing upon November 10, 2015, and continuing at all times thereafter until November 9, 2017 (the "Third Temporary Suspension of Fee Collection"), or during the period commencing upon November 10, 2017, and continuing at all times thereafter until November 10, 2018 (the "Fourth Temporary Suspension of Fee Collection") (collectively, the First Temporary Suspension of Fee Collection, the Second Temporary Suspension of Fee Collection, the Third Temporary Suspension of Fee Collection, and the Fourth Temporary Suspension of Fee Collection are the "Temporary Suspension of Fee Collection"), and (ii) neither any city, nor the county shall be required to collect any ~~of the fees in-under~~ this chapter for any such building permit issued by any such city or the county, respectively, during the temporary suspension of fee collection. The foregoing provisions of this ~~subdivision-subsection B-~~ shall not in any way whatsoever otherwise affect chapter 17.90, or the authority for any action taken or to be taken thereunder, including, but not limited to, the county's expenditure or other use at any time of any fees that have been required to be paid and collected pursuant to this chapter. The temporary suspension of fee collection shall automatically terminate upon the last date thereof without the necessity of any action by the county, including, but not limited to, the board or the department.

#### **17.90.050 - Capital improvement plan.**

- A. Adoption of ~~the-a~~ Capital Improvement Plan. Prior to establishing any fees under this chapter, ~~T~~the board, at a noticed public hearing, ~~has duly shall~~ adopted by resolution ~~an initiala~~ capital improvement plan, a copy of which ~~was shall be~~ on file with the clerk ~~to-of~~ the board at the time that the board ~~adopted-imposes fees under~~ this chapter.
- B. Updating the Capital Improvement Plan. The department annually shall prepare and submit a proposed update to the capital improvement plan to the board at a public hearing, with prior notice thereof given to the extent required by law; following the conclusion of such public hearing, the board, by resolution adopted at such public hearing, shall update the capital improvement plan. In addition to the foregoing provisions of this subsection, from time to time, the department may prepare and submit a proposed update to the capital improvement plan to the board at a public hearing, with prior notice thereof given to the extent required by law; following the conclusion of such public hearing, the board, by resolution adopted at such public hearing, may update the capital improvement plan.
- C. Filing the Capital Improvement Plan with the Clerk ~~to-of~~ the Board. There shall be a copy of the then-current capital improvement plan on file with the clerk ~~to-of~~ the board.
- D. During any period while fees are not established under this chapter, the department is relieved of its obligations under subsection B of this section.

#### **17.90.060 - Payment of ~~the~~-fees.**

- A. Time for Payment of ~~the~~-Fees. Except for exempt construction (unless a security contract provides for conditional deferral of the payment of any fees pursuant to subdivision subsection E- of this section for a low or moderate income residence, or there is full payment under protest of the amount of ~~the~~-fees under subdivision-subsection F- or G- of this section, or a city or the county issues a building permit for construction within such city or the unincorporated area, respectively, during the “temporary suspension of fee collection,” as provided in subdivision-subsection B- of section 17.90.040, herein), fees set forth in the applicable schedule of fees shall be due and paid in full by the applicant pursuant to the provisions of this chapter prior to and as a requirement for the issuance of a building permit to the applicant by the county for any construction within the unincorporated areas of Fresno county, or by the relevant city for any construction within such city, respectively. Notwithstanding anything to the contrary in this chapter, the failure of the timely and full payment by an applicant, or collection by, or for and on behalf of, the county from an applicant, of any fees which are due and payable by the applicant under this chapter shall not relieve an applicant from paying the full amount of such fees to the county.
- B. Credit Card or Debit Card Payment of ~~the~~-Fees—Card Payment Program. An applicant’s lawful use of its credit card or debit card to pay ~~the~~-fees pursuant to this chapter, subject to the provisions of this subsection, is hereby authorized for any card issuer or processor that participates in any card payment program referred to in this subsection. An applicant, who lawfully owns a credit card or a debit card, may lawfully use such credit card or debit card to pay ~~the~~-fees upon the applicant’s full payment of the convenience fee to the relevant card issuer or processor through any card payment program, if any, that may be made available by the county, including, but not limited to, an Internet-based payment system, a telephonic interactive voice response system, other electronic, including telephonic, means established by the county auditor, or at the department, provided however, if such credit card or debit card charge, including the amount thereof for ~~the~~-fees or the convenience fee, is not fully paid to the relevant card issuer or processor following the applicant’s presentment of its credit card or debit card to a card issuer or processor, or if any portion of the credit card or debit card charge, including the amount thereof for ~~the~~-fees or the convenience fee, is charged back to the county, any county record honoring such payment shall be void, and the applicant shall continue to be obligated to pay the full amount of ~~the~~-fees and the convenience fee then due and payable as if no such payment had been attempted. Any payment made pursuant to this subsection shall be deemed to be made first for the convenience fee, and then, the balance thereof, to be for the fee.
- C. Amounts of ~~the~~-Fees. Subject to subsection D of this section, fees under this section shall be payable by applicants, respectively, in those specific amounts set forth in the schedule of fees, which is attached hereto as schedule A, and incorporated herein by this reference as though it were fully set forth below, and which is hereby approved and adopted by the board, provided however: (1) for the annual period commencing on the effective date of this chapter and continuing thereafter through and including the first anniversary of the effective date of this chapter, the amounts of such fees payable shall be thirty-three percent of the specific amounts set forth in the applicable schedule of fees, which shall include any annual increases, as applicable, in such fees made by the county under subsection D of this section, and (2) for the annual period commencing the day after first anniversary of the effective date of this chapter and continuing thereafter through and including the third anniversary of the effective date of this chapter, the amounts of such fees payable shall be sixty-seven percent of the specific amounts set forth in the applicable schedule of fees, which shall include any annual increases and any increases resulting from any new

appropriate study, as applicable, in such fees made by the county under subsection D of this section, respectively.

The applicable amounts of ~~the~~ fees shall be determined, by using the then-current schedule of fees, as of the date that the applicable building permit for construction is issued to the applicant paying ~~the~~ fees, except as otherwise provided as follows:

1. The applicable amounts to be remitted by an applicant under the applicable schedule of fees shall be reduced by the amount of any development fees charged to the applicant by, or for and on behalf of, any city, and paid by the applicant (the “Reduced Amount”), to provide funding toward the costs of the types of county public facilities identified in the relevant impact fee report (e.g., county library facilities), provided however, the reduced amount allowed under this chapter shall not exceed the amount that otherwise would have been payable by the applicant under this chapter for the same category of county public facilities identified in the applicable schedule of fees (e.g., “library”), provided however, the applicant shall continue to be liable to the county for the payment of ~~the~~ fees for the reduced amount to the extent that such city’s development fees, or any portion thereof, are determined by a court of competent jurisdiction to be unlawful.
  2. For any construction in conformity with a vesting final subdivision map, recorded in the office of Fresno County recorder, based on an unexpired vesting tentative subdivision map, where the application for such vesting tentative subdivision map was deemed complete, after the board’s adoption of this chapter, by the local agency having jurisdiction over such matter, the amounts of ~~the~~ fees shall be determined by using one of the following schedules of fees that has the lesser amount in total: (i) the then-current schedule of fees, as of the date that the applicable building permit for construction is issued to the applicant paying ~~the~~ fees; or (ii) starting with the schedule of fees, and the applicable cost index formula for such schedule of fees, that were in effect at the time that the application for such vesting tentative subdivision map was deemed complete by such local agency, and annually updating such schedule of fees to include the annual increases in the specific amounts of the fees by applying such applicable cost index formula to those specific amounts of the fees, respectively, set forth in such schedule of fees, as provided in subsection D.2. of this section, up to the date such applicable building permit for construction is issued to such applicant.
- D. Updating the schedule of fees. The board shall be authorized to adopt updates and increases to ~~the any~~ fees set forth in the schedule of fees, as follows (provided however, notwithstanding anything to the contrary in this ~~subdivision-subsection~~ D., neither the department nor the board shall be required to take any action under ~~subdivision-subsection~~ D-(1)- during the “temporary suspension of fee collection,” in ~~subdivision-subsection~~ B- of section 17.90.040, herein, and neither the department nor the board shall be required to take any action under subsection D of this section during any period while fees are not established under this chapter):
1. Not later than April 15th prior to each county fiscal year commencing with county fiscal year 2009—2010 (i.e., these provisions will first apply to April 15, 2009): (i) the department shall, but without the requirement of conducting or obtaining a further study (e.g., a new impact fee report), prepare a proposed updated schedule of fees for the board’s adoption as provided in this subsection; the department shall prepare such proposed updated schedule of fees by applying the cost index formula, attached

hereto as schedule B, and incorporated herein by this reference as though it were fully set forth below, to those specific amounts of ~~the~~ fees, respectively, set forth in the then-current schedule of fees, and calculating the proposed maximum annual increases in those specific amounts of ~~the~~ fees, respectively, set forth in the then-current schedule of fees, which proposed increases in fees shall be rounded up or down, as applicable, to the nearest dollar (i.e., fifty-one cents to ninety-nine cents shall be rounded up, and one cent to fifty cents shall be rounded down), (ii) the department shall submit such proposed updated schedule of fees to the board for its adoption, and (iii) the board may, up to the maximum amounts of those specific amounts of ~~the~~ fees, respectively, set forth in such proposed updated schedule of fees, adopt such updated schedule of fees as an ordinance, which is an amendment to this chapter.

2. Notwithstanding anything to the contrary in this subsection, for qualifying construction referred to in subsection (C)(2) of this section, which is in conformity with a vesting final subdivision map, recorded in the office of Fresno County recorder, based on an unexpired vesting tentative subdivision map, the county will continue to use the applicable schedule of fees, referred to in subsection (C)(2)(ii) of this section, and to apply the applicable cost index formula, referred to in subsection (C)(2)(ii) of this section, to such schedule of fees according to the foregoing procedures in subsection (D)(1) of this section.

3. Notwithstanding anything to the contrary in ~~subdivision-subsection D-(1)~~ of this section, from time to time, after conducting or obtaining an appropriate further study (e.g., a new impact fee report, which may be prepared by the county or a consultant engaged by the county, and need not follow the form of the then-current impact fee report), the board may, but in no event later than April 15 prior to each fifth county fiscal year commencing with county fiscal year 2018-19 (i.e., these provisions shall first apply to April 15, 2019) the board shall, up to the maximum amounts of those specific amounts of ~~the~~ fees, respectively, set forth in such updated fee study, update and adjust the specific amounts of ~~the~~ fees, respectively, set forth in the then-current schedule of fees, by adopting an updated schedule of fees as an ordinance, which is an amendment to this chapter.

Upon the board's adoption of any updated schedule(s) of fees in each manner provided in this subsection: (i) such updated schedule(s) of fees shall be the applicable schedule(s) of fees, respectively, for this chapter effective commencing on July 1 of the relevant county fiscal year and continuing thereafter as the applicable schedule(s) of fees, respectively, unless and until such schedule(s) of fees is (are) further updated by the board as provided in this subsection, and (ii) for any ~~of the~~ fees to be collected in any of the cities under this chapter, the director, or his or her designee, shall give notice of such adopted updated schedule(s) of fees to each of the cities pursuant to the terms of each of the city-county MOUs, respectively.

E. Conditional Deferral of Fees for Low or Moderate Income Residence. The payment of ~~the~~ fees that otherwise is required pursuant to the provisions of this chapter shall be conditionally deferred, subject to the provisions of this subsection, for construction of a low or moderate income residence, if the appropriate county or city official responsible for issuing the building permit for such construction (i.e., the director, or his or her designee, for construction in the unincorporated areas of the county, or the city building official for construction in the relevant city, respectively) has first received, at the time that the building permit for such construction is to be issued by the county or the relevant city, respectively,

written proof in the form of a copy of a security contract bearing the county recorder's official stamp confirming recordation of the lien of the security contract in the office of county recorder against the affected property upon which the low or moderate income residence will be constructed. The form and substance of the applicable security contract, to assure the county of full compliance with the terms and conditions of such security contract by the owner of such affected property, including such owner's payment of the full amount of fees to the county as and when required under the security contract, shall be specified and approved by the county separately from this chapter. To that end, the security contract for each low or moderate income residence shall provide, among other things to be specified by the county therein, all of the following minimum provisions:

1. The county's conditional deferral of the payment of ~~the~~ fees shall be in effect only so long as:
  - a. If the affected property has a single-family low or moderate income residence: (i) the affected property shall remain owned solely by the owner of such property who entered into the security contract with the county, and (ii) such affected property shall be the primary residence of such owner of such property, provided however, a developer of such residence may own and sell such residence to a person or persons who the county has qualified as a prospective owner of a single-family low to moderate residence, and which prospective owner shall undertake the obligations of an owner of the affected property under this subsection pursuant to a security contract under subsection (E)(9) of this section, provided further however, if the developer is other than a nonprofit housing developer, such person or persons to be qualified by the county as a prospective owner shall be specifically identified by name, and such other identifying information as may be required by the county, in such security contract with such developer;
  - b. If the affected property has a multifamily low or moderate income residence, any transfer (as defined in subsection (E)(4) of this section) by the owner of such property, or any portion thereof or part therein, shall only be upon the county's prior written consent, which may be given or withheld in its sole and absolute discretion;
  - c. The affected property is a low or moderate income residence; and
  - d. Such owner of the affected property otherwise complies with the terms and conditions of such security contract.
2. The county will not charge the owner of the affected property any interest on the amount of fees conditionally deferred only if, and only so long as, such owner is not in breach or default of the security contract, or any part of it.
3. The owner of the affected property shall agree to indemnify, defend, and save harmless the county, and the trustee acting under the deed of trust for the county, and their respective officers, agents, and employees, against such risks and losses and for such matters as more fully described in detail in the security contract.
4. The owner of the affected property shall give the county at least twenty-one calendar days' advance written notice of any proposed transfer of the affected property, or any portion thereof or part therein, to any person, firm, or corporation, or to any entity. Except as otherwise provided for a multifamily low or moderate income residence in

subsection (E)(1)(b) of this section, such owner shall also require the escrow agent for any such proposed transfer of such affected property to provide in the escrow transfer instructions that the full amount of the conditionally deferred fees shall be paid to the county prior to disbursing any transfer proceeds to such owner, and if there are insufficient transfer proceeds, then by the owner upon close of such escrow. A transfer of the affected property, or any portion thereof or part therein, shall mean: such owner's sale, entering into a contract to sell, transfer, grant of, conveyance of, assignment of, or alienation of the affected property, or of any portion thereof, or of any interest therein, or of any title thereto, whether voluntarily, involuntarily, or by operation of law, whether with or without consideration, or divestment of any such interest in or title to such property in any manner or way, whether voluntarily, involuntarily, or by operation of law.

5. If the owner of the affected property rents a multifamily residence on such property to any person, then: (a) upon the issuance of a certificate of occupancy for such multifamily residence (provided however, if the owner, at such time, has not yet obtained a rental commitment for a residence from any person or persons, then, provided that the owner otherwise complies with the security contract, the owner shall deliver to the county the initial written report hereinafter required concerning such residence within five calendar days follow the owner's initial rental of such residence to a person or persons who qualify as renters of a multifamily low or moderate income residence), and continuing thereafter annually on or before July 1st of each year, such owner shall also submit a written report to the county, on a form to be provided by county, certifying to the county's satisfaction that such property qualifies and remains a low or moderate income residence, and (b) such owner shall give the county at least twenty-one calendar days' advance written notice if such property, or any portion thereof, will lose its status as a low or moderate income residence.
6. At such time that either: (a) the owner of the affected property transfers (as defined in subsection (E)(4) of this section) the affected property, or any portion thereof or part therein, to a person, firm, or corporation, or to an entity, or (b) the affected property, or any portion thereof, loses its status as a low or moderate income residence, then (1) the conditional deferral of ~~the~~ fees under the security contract shall be immediately revoked without affecting the remainder of the security contract, and (2) the full amount of the conditionally deferred fees shall become immediately due and payable to the county. If such owner fails to pay the full amount of such fees to the county upon the occurrence of any such event, the failure of such full and timely payment also shall be a breach of the security contract, and such owner shall be additionally liable to the county for the payment of interest as provided in subsection (E)(7) of this section. The foregoing provisions of this subsection shall apply regardless of whether, in the case of such transfer, the transferee could have otherwise qualified for the conditional deferral of ~~the~~ fees under this chapter, and regardless of whether such transfer is or is not recorded in the office of the county recorder against the affected property, provided however, the foregoing provisions of this subsection shall not apply to any transfer between co-owners of affected property containing a single-family residence, to any sale by a developer of a single-family residence to a person or persons who the county has qualified as a prospective owner of a single-family low to moderate income residence pursuant to and subject to subsection (E)(1)(a) of this section, and which prospective owner shall undertake the obligations of an owner of the affected property under subsection (E)(1)(a) of this section pursuant to a security contract under subsection (E)(9) of this section, or to any transfer of a multifamily low or moderate

income residence, by the owner of such property, or any portion thereof or part therein, upon the county's prior written consent, as provided in subsection (E)(1)(b) of this section.

7. If the owner of the affected property fails to perform any obligation of such owner under the security contract, and in the manner therein provided, or is in breach or default of any obligation of such owner therein, the county may declare any of the foregoing as a breach or default of such owner, under the security contract, and immediately revoke the conditional deferral of the payment of ~~the~~ fees under the security contract by written notice to such owner, and demand full and immediate payment from such owner of the amount of ~~the~~ fees that have been conditionally deferred, in which case, such owner shall immediately become liable for payment of, and shall pay the county, the full amount of such fees, plus interest, at the rate prescribed by law for interest on judgments, which shall accrue on the full amount of such unpaid fees commencing from the date of such failure, breach, or default until the date that such owner pays the county the full amount of such fees, plus any costs or expenses of the county.
8. Upon the payment to the county of all amounts due and payable under the security contract, and the costs of the county recorder for recordation of a reconveyance of the lien of the security contract as provided hereinafter, upon all other obligations under the security contract having been fully discharged by the owner of the affected property, and upon written request by such owner of the county stating that such amounts have been fully paid, and that such obligations have been fully discharged, all of which shall be to the county's satisfaction, then the county shall cause the reconveyance, without any covenant or warranty, express or implied, of any interests of the county, or of any trustee acting for the county, in the affected property or that portion of the affected property then held by such trustee under the security contract. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."
9. For any single-family low or moderate income residence, where there is a sale by a developer of such single-family residence to a person or persons who the county has qualified as a prospective owner of a single-family low to moderate income residence pursuant to and subject to subsection (E)(1)(a) of this section, provided that such developer for such single-family residence is not otherwise in default or breach of the relevant security contract, ~~the~~ fees may continue to be conditionally deferred for such prospective owner pursuant to this chapter only if such prospective owner shall first enter into a security contract, which shall be recorded in the office of county recorder against such affected property (and the county will provide a copy of such recorded security contract to such owner) as a pre-condition of the developer's sale of such single-family residence to such prospective owner, and such prospective owner thereafter shall perform all of his obligations under such security contract, including paying the county the full amount of the conditionally deferred fees when they are due and payable according to the terms and conditions thereof. Prior to such sale, such developer shall cause such prospective owner to acknowledge, in writing, to the county his obligations under the proposed security contract with such prospective owner. Prior to such sale, such developer shall also require the escrow agent for any such proposed sale of such affected property to provide in the escrow sale instructions that, as part of such sale and recordation of such security contract with such prospective owner, the lien of the pre-existing security contract with the developer

upon the affected property may be released, pursuant to subsection (E)(8) of this section without the requirement of the payment of ~~the~~ fees at such time, only after such recordation of such security contract with such prospective owner.

10. For a multifamily low or moderate income residence that is one of the units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least forty-nine percent of the total units are reserved for occupancy by lower income households, as further provided in subdivision (b)(1) of California Government Code, Section 66007, notwithstanding anything to the contrary in this section, the security contract shall contain all such provisions as allowed by law, which may include the county requiring the posting of a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of any fees that are conditionally deferred under this section.

Before any fees are to be conditionally deferred by the county, or any such security contract is to be recorded against such affected property, pursuant to this subsection, the following procedures will be followed:

- a. The director, or his or her designee, shall be allowed up to sixty calendar days from the date that the director, or his or her designee, receives a completed, signed application for conditional deferral of ~~the~~ fees, with supporting documentation required by the county, to make a determination whether or not the applicant proposes a qualifying low or moderate income residence, and to approve or deny such application, based on the requirements of this chapter.
- b. If the director, or his or her designee, approves such application for conditional deferral of ~~the~~ fees, the board or the director, on behalf of the county, will approve and enter into a security contract, upon terms and conditions specified by the county, with the owner of such affected property, and the director, or his or her designee, will record the security contract in the office of county recorder against such affected property, and provide a copy of such recorded security contract to such owner. If the legal description of such affected property includes dwelling units that do not qualify as low or moderate income residences, such recorded document nevertheless may include such dwelling units in order for the lien of such security contract to cover all of the affected or potentially affected low or moderate income residences.

Notwithstanding anything stated to the contrary to the foregoing provisions in this subsection (except for a security contract for a multifamily residence, that is one of the units reserved for occupancy by lower income households included in a residential development proposed by a nonprofit housing developer in which at least forty-nine percent of the total units are reserved for occupancy by lower income households, as further provided in subdivision (b)(1) of California Government Code, Section 66007), no security contracts may be approved or entered into by the county under this subsection anytime after two years from the effective date of this chapter unless and until the board, within two years from the effective date of this chapter, adopts an ordinance amending this chapter, which deletes or extends such two year date. The foregoing provisions of this subsection shall not affect the payment of any fees, or any portion thereof, that have been conditionally deferred, or the payment of any interest, or any portion thereof, that

has accrued, pursuant to this subsection, including under any security contract that has been entered into hereunder prior to such two year date, or the validity or enforceability of, or the performance of any obligation of any owner of affected property owner under, any security contract that has been entered into hereunder prior to such two year date, or any security contract with any person or persons who the county has qualified as a prospective owner of a single-family low to moderate income residence pursuant to this chapter prior to such two year date, or any lien of any security contracts upon any affected property, pursuant to this subsection.

- F. Request for Adjustment to or Waiver of Fees for Specific Development. An applicant that proposes construction with respect to development and has received a preliminary estimate of any fees due under this chapter, pursuant to this section, may file a written request for an adjustment to or waiver of such fees with respect to such construction, as provided in this subsection. The request shall be delivered to the director not later than the applicant's filing of an application for a building permit for construction with the county or relevant city, as applicable, and a copy of such request shall accompany such application for such building permit. ~~The fees~~**Fees**, as set forth in the applicable schedule of fees, may be paid under protest by the applicant tendering the full amount of the required payment of ~~the~~ fees. Absent the full payment of ~~the~~ fees (or conditional deferral of payment of ~~the~~ fees for a low or moderate income residence authorized under subsection E of this section, or full payment under protest of the amount of ~~the~~ fees under this subsection, or subsection G of this section), building permits shall not be issued for construction with respect to development. If there is to be any such adjustment to or waiver of such fees under this subsection, any amounts overpaid by the applicant prior to such adjustment to or waiver of such fees will be refunded to the applicant within thirty calendar days of the date of the county's final determination thereof. The adjustment to such fees may be requested by the applicant on the ground that the relevant development has been inappropriately classified in determining the amount of ~~the~~ fees (a "fee reclassification request"). The adjustment to or waiver of such fees also may be requested by the applicant on the grounds that there is an absence of any reasonable relationship: (1) between the fees' use and the type of relevant development on which ~~the~~ fees are imposed; (2) between the need for the type of county public facilities and the type of relevant development on which ~~the~~ fees are imposed; and (3) between the amount of ~~the~~ fees and the cost of the county public facilities, or portion thereof, attributable to the relevant development on which ~~the~~ fees are imposed (individually, or collectively, a "fee redetermination request"). The request for any adjustment to or waiver of ~~the~~ fees shall identify the type of request, and include a statement informing the director of the relevant specific facts supporting such request, whether the applicant seeks an adjustment to or a waiver of such fees, the legal theory forming the basis of such request, and the specific amount of the fees sought to be adjusted or waived. The burden of proof, by a preponderance of evidence, in establishing these grounds shall be on the applicant filing such request. Upon the director's timely receipt of a completed request, signed by the applicant, for any adjustment to or waiver of ~~the~~ fees, and the applicant's compliance otherwise with this subsection, the following procedures will be followed in connection with such request:
1. Within thirty calendar days following receipt of the request (or such additional time provided in subsection (F)(1)(a) of this section), the director, or his or her designee, will conduct a preliminary evaluation of the request, which will be limited, as follows: (i) for a fee reclassification request, whether or not the development has been inappropriately classified in determining the amount of the fees; and (ii) whether or not

the request is a fee redetermination request; and upon concluding such preliminary evaluation, the director, or his or her designee, shall, within such thirty calendar day period (or such additional time provided in subsection (F)(1)(a) of this section), notify the applicant, in writing, as follows:

- a. If the request, or any portion thereof, is a fee reclassification request, the director, or his or her designee, will inform the applicant that the county either has accepted or rejected such request, or portion thereof, giving the reason therefor, or that the county needs additional information in order to make a determination, in which case, the director, or his or her designee, shall request the additional information from the applicant. Within thirty calendar days of the receipt of such additional information which the director, or his or her designee, determines to be sufficient, the director, or his or her designee, will inform the applicant making such request that the county either has accepted or rejected such request, or portion thereof, giving the reason therefor. Such action of the director shall be the final administrative determination of the county with respect to such request, and the applicant shall be bound by such determination.
- b. If the request, or any portion thereof, is a fee redetermination request, the director, or his or her designee, will inform the applicant that the county will need to study facts, and conduct such other research as the director, or his or her designee deems appropriate, relevant to such request, with the assistance of a consultant, selected and engaged by the county, who would prepare and advise the county in connection with an impact fee report that is specific to the relevant development, but addresses the types of county public facilities that are described in the then-current impact fee report ("Specific Impact Fee Report"), provided that all such costs incurred by the county in connection with such request, as identified hereinbelow, shall be fully borne by the applicant, in which case:
  - i. The director, or his or her designee, will provide the applicant with a written estimate of the county's costs to be incurred in connection with such request, including the estimated costs of county staff time (including, but not limited to, costs for county staff salaries, benefits, and, if any, overtime) for administering and pursuing to completion the county's determination of such request, including appeals, if any, to the fee review committee and the board, the estimated fees and charges of the county's legal counsel, the estimated fees and charges of the county's consultant for performing its services to the county in connection with the specific impact fee report, and a contingency for any additional or incidental costs that the county may incur in connection with all of the foregoing.
  - ii. Upon receipt of the director's, or his or her designee's, estimate of the amount in subsection (F)(1)(b)(i) of this section, the applicant shall deposit funds, in the full amount of such estimate, with the director within fifteen calendar days of the date thereof. If the applicant fails to timely deposit the full amount of such funds with the director, unless the applicant otherwise obtains a written extension of such deadline from the director, which the director may grant upon the applicant's showing of good cause, the applicant's request will be deemed abandoned. If, upon the county's final determination of the applicant's request, as provided hereinafter in this subsection, the county has any of such funds of applicant, which have

remained unexpended, the county shall, within forty-five calendar days of such final determination, remit such unexpended funds to the applicant; otherwise, the county shall not have any obligation to remit any funds deposited by the applicant for purposes of this subsection.

2. For any fee redetermination request made in compliance with this subsection, within one hundred twenty calendar days of the director's timely receipt of the full amount of the funds required to be deposited by the applicant under subsection (F)(1)(b)(ii) of this section, the county will select and engage a consultant who will conduct an appropriate study and prepare the specific impact fee report, the director will make a written determination based on the specific impact fee report, and the director, or his or her designee, will inform the applicant of the results of such specific impact fee report and the director's determination, including whether or not the director will propose to the board an adjustment to or waiver of, if any, the fees for the relevant development based on the specific impact fee report; in the case of a proposed adjustment or waiver, the amount thereof shall be stated. Such determination will be issued by regular mail, first class postage prepaid.
  - a. If the director proposes an adjustment to or waiver of ~~the~~ fees, and the applicant does not file an appeal thereto, pursuant to subsection (F)(3) of this section, or concurs with the director, the director will request the board, as soon as is practical after the elapse of such time for an appeal provided in subsection (F)(3) of this section, or such concurrence of the applicant, to make such proposed adjustment or waiver, based on the specific impact fee report, in which case, the board will consider whether or not to, and may, up to the amount recommended by the director, make any such adjustment to or grant a waiver of ~~the~~ fees based on the specific impact fee report (if the board makes such adjustment to or grants a waiver of ~~the~~ fees, any reference in this chapter to the relevant impact fee report shall mean, with respect to such relevant development, the specific impact fee report); the determination of the board with respect to such proposed adjustment to or waiver of ~~the~~ fees shall be the final administrative determination of the county with respect to such request, and the applicant shall be bound by such determination.
  - b. If the director's determination is not to propose to the board an adjustment to or waiver of ~~the~~ fees, and the applicant does not file an appeal thereto, pursuant to subsection (F)(3) of this section, such determination of the director shall be the final administrative determination of the county with respect to such request, and the applicant shall be bound by such determination.
3. If the applicant making the fee redetermination request disagrees with the director's determination in subsection (F)(2) of this section, such applicant may file a written appeal to the fee review committee for such request, as provided in this subsection. The appeal, which shall be prepared and signed by the applicant, shall include the applicant's mailing address for receiving notices in connection with such appeal, and shall be filed with the county administrative officer at his or her then-current address, within thirty calendar days after the date of issuance of the director's determination in subsection (F)(2) of this section. The date of issuance of such determination shall be the date of its postmark, provided however, for any such determination mailed to an applicant's address outside of Fresno County, but within the state of California, such filing deadline shall be extended by five calendar days, and for any such determination

mailed to an applicant's address outside of California, such filing deadline instead shall be extended by ten calendar days. The appeal shall be limited to the applicant's requested grounds in its request made to the director, or his or her designee, in subsection F hereinabove. The burden of proof, by a preponderance of evidence, in establishing these grounds on such appeal shall be on the applicant.

- a. Within fifteen calendar days of the receipt of the applicant's timely filed written appeal in subsection (F)(3) of this section, the county administrative officer, or his or her designee, shall notify the applicant and the director of the scheduled date and time, not later than thirty calendar days from the date of such notice by the county administrative officer, or his or her designee, for the hearing of the appeal by the fee review committee; such notice shall be sent by regular mail, first class postage prepaid, to the applicant at such address the applicant specifies in its appeal, and to the then-current address of the director.
- b. The appeal shall be presented to and considered by the fee review committee. Relevant oral and written evidence may be presented by any person at such hearing. The hearing may be continued from time to time as deemed necessary by the fee review committee, provided however, the fee review committee shall conclude the hearing within thirty calendar days from its commencement, unless the cause of any delay is due to the applicant, in which case such hearing period may be extended by any delay caused by the applicant, provided further however, if the applicant fails to appear at such hearing or continued hearing, the fee review committee may summarily dismiss the appeal. No later than thirty calendar days after the hearing is concluded, the fee review committee shall issue to the applicant and director a written determination on the appeal, including whether or not the fee review committee will propose to the board an adjustment to or waiver of, if any, the fees for the relevant development based on the specific impact fee report; in the case of a proposed adjustment or waiver, the amount thereof shall be stated. Such determination will be issued by regular mail, first class postage prepaid.
  - i. If the fee review committee proposes an adjustment to or waiver of ~~the~~ fees, and neither the applicant nor the director, files an appeal thereto, pursuant to subsection (F)(3)(c) of this section, or both the applicant and the director concur with the fee review committee, the fee review committee will request the board, as soon as is practical after the elapse of such time for an appeal provided in subsection (F)(3)(c) of this section, or such concurrence of the applicant and the director, to make such proposed adjustment to or waiver, based on the specific impact fee report, in which case, the board will consider whether or not to, and may, up to the amount recommended by the fee review committee, make any such adjustment to or grant a waiver of ~~the~~ fees based on the specific impact fee report (if the board makes such adjustment to or grants a waiver of ~~the~~ fees, any reference in this chapter to the relevant impact fee report shall mean, with respect to such relevant development, the specific impact fee report); the determination of the board with respect to such proposed adjustment to or waiver of ~~the~~ fees shall be the final administrative determination of the county with respect to such appeal, and the applicant and the director shall be bound by such determination.
  - ii. If the fee review committee's determination is not to propose an adjustment to or waiver of ~~the~~ fees, and neither the applicant nor the director files an appeal

thereto, pursuant to subsection (F)(3)(c) of this section, such determination of the fee review committee shall be the final administrative determination of the county with respect to such appeal, and the applicant and the director shall be bound by such determination.

- c. If the applicant or the director disagrees with the fee review committee's determination in subsection (F)(3)(b) of this section, either such party, or both of such parties, may file a written appeal to the board, as provided in this subsection. The appeal, which shall be in writing and prepared and signed by the appellant, shall include the appellant's mailing address for receiving notices in connection with such appeal, and shall be filed with the clerk ~~to of~~ the board, with a copy thereof provided the same day to the other party, within thirty calendar days after the date of issuance of the fee review committee's written determination under subsection (F)(3)(b) of this section. The date of issuance of such determination shall be the date of its postmark, provided however, where the applicant is an appellant, for any such determination mailed to an applicant's address outside of Fresno County but within the state of California, such filing deadline shall be extended by five calendar days, and for any such determination mailed to an applicant's address outside of California, such filing deadline instead shall be extended by ten calendar days. The burden of proof, by a preponderance of evidence, in establishing these grounds on such appeal shall be on any appellant. Within fifteen calendar days of the receipt of the appellant's timely filed written appeal in this subsection, the clerk ~~to of~~ the board, or his or her designee, shall notify the applicant and the director of the scheduled date and time, which shall be not later than sixty calendar days from the date of such notice by the clerk ~~to of~~ the board, or his or her designee, for the hearing of the appeal by the board; such notice shall be sent by regular mail, first class postage prepaid, to the applicant at such address the applicant specifies in its appeal, if any, filed with the clerk ~~to of~~ the board, or the applicant's last known mailing address if the applicant is not an appellant, and to the then-current address of the director. The appeal shall be presented to and considered by the board. Relevant oral and written evidence may be presented by any person at such hearing. The board may decide such appeal based on the information that formed the record before the fee review committee, or may decide such appeal de novo, based on the information that formed the record before the fee review committee and any evidence presented at a hearing before the board, which shall in any event include the specific fee report. The hearing may be continued from time to time as deemed necessary by the board, provided however, if the appellant fails to appear at such hearing or continued hearing, the board may summarily dismiss the appeal. Within a reasonable time after the hearing is concluded, the board shall issue to the applicant and director a written determination on the appeal, including whether or not there will be an adjustment to or waiver of, if any, the fees for the relevant development based on the specific impact fee report (if the board makes such adjustment to or grants a waiver of ~~the~~ fees, any reference in this chapter to the relevant impact fee report shall mean, with respect to such relevant development, the specific impact fee report); in the case of an adjustment or waiver, the amount thereof shall be stated. Such determination will be issued by regular mail, first class postage prepaid. The determination of the board shall be the final administrative determination of the county with respect to such appeal, and the applicant and the director shall be bound by such determination.

- d. The board may establish a charge in the amount that is necessary to recover the costs of processing an applicant's appeal to the board. Once such a charge is established, payment of such charge shall accompany any appeal to the board.

Notwithstanding anything stated to the contrary in subsection F of this section, the county's expenditure of any funds of the applicant making any fee redetermination request, including any appeal thereof, pursuant to subsection F of this section shall not be a factor in the director's, the fee review committee's, or the board's determination concerning any fee redetermination request, including any appeal thereof, as applicable.

G. Protest. Any party may protest the imposition of any fees pursuant to this chapter upon a specific development by meeting all of the following requirements:

1. Tendering any required payment in full or providing satisfactory evidence of arrangements to pay ~~the~~ fees when due or ensure performance of the conditions necessary to meet the requirements imposed by this chapter.
2. Serving written notice on the clerk ~~to~~of the board, which notice shall contain all of the following information:
  - a. A statement that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed by this chapter are provided for or satisfied, under protest.
  - b. A statement informing the board of the relevant factual elements of the dispute and the legal theory forming the basis of the protest.
3. Subject to and as provided in California Government Code, Section 66020, the protest shall be filed pursuant to subsection (G)(2) of this section at the time of approval or conditional approval of the relevant development, or no later than ninety calendar days after the date of the imposition of ~~the~~ fees hereunder upon the relevant development, whichever occurs first.

Where a party has filed a protest in compliance with all of the foregoing provisions of this subsection, the protest resolution procedures and requirements, and the procedures and requirements, including the limitation period, for filing of any action to attack, review, set aside, void, or annul the imposition of any fees, shall be as set forth under and governed by the provisions of California Government Code, Section 66020, all of which are incorporated herein by this reference as if they have been set forth herein below. A protesting party's compliance with all of the foregoing provisions of this subsection, and California Government Code, Section 66020, shall be conditions precedent to such protesting party filing any action to attack, review, set aside, void, or annul the imposition of any fees under this chapter.

As provided in subdivision (b) of Section 66020 of the California Government Code, this subsection does not limit the ability of the county or a relevant city to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a development.

- H. Demolition or Destruction Offset. Where a building permit is issued for residential construction after demolition of prior residential construction (i.e., single-family residences, or multifamily residences), or where a building permit is issued for nonresidential construction after demolition of prior nonresidential construction (i.e., retail, office, industrial, or warehouse) which prior residential construction or prior nonresidential construction, as applicable, lawfully could have been occupied on the same lot, or where construction replaces prior construction on the same lot which was damaged or destroyed by fire, earthquake, natural disaster as declared by the governor, or other causes beyond the owner's reasonable control, the amount of construction taken into account under this chapter shall: (1) for residential construction, (i) not be subject to the imposition of ~~the~~ fees pursuant to this chapter where no additional separate dwelling units are created on such lot, or (ii) be subject to the imposition of ~~the~~ fees pursuant to this chapter to the extent that any additional, separate dwelling units are created for a single-family residence or multifamily residence, whether attached or detached, or (2) for nonresidential construction, be reduced by the number of square feet of prior nonresidential construction which was so demolished or replaced.
- I. Reduction of Nonresidential Construction. When an applicant pays ~~the~~ fees for nonresidential construction pursuant to subsection A of this section, and such construction is subsequently reduced before its completion so that it otherwise would have been entitled to a corresponding lower amount of ~~the~~ fees if such construction, reduced by such amount, were proposed at the time that ~~the~~ fees were originally paid by the applicant, the following procedures will apply to the applicant's request for any refund of any of such fees:
1. The applicant may make a written request to the director for a partial refund of such fees paid (except for the portion thereof otherwise provided in subsection (I)(3) of this section), which shall state the amount of such reduced construction;
  2. The applicant shall provide the director with any other evidence that the director shall require to substantiate the applicant's statement in such request; and
  3. Within thirty calendar days following the director's receipt of such written request, provided that the director is satisfied that such construction has been reduced before its completion by the amount specified in the applicant's request, the county will make a partial refund to the applicant of such fees paid, based upon such reduced construction applied to the amount of ~~the~~ fees in the applicable schedule of fees that was in effect at the time that such fees were originally paid by the applicant, provided however, there shall not be any refund for the portion of such fees for the administration charges set forth in Section 17.90.090(A) herein. There shall not be any refund for any payment of the convenience fee, if previously paid.
- J. Abandonment of Construction. When an applicant pays ~~the~~ fees for construction pursuant to subsection A of this section, and such construction is subsequently abandoned without any further action beyond the applicant obtaining a building permit for such construction, the following procedures will apply to the applicant's request for any refund of any of such fees:
1. The applicant may make a written request to the director for a refund of such fees paid (except for the portion thereof otherwise provided in subsection (J)(3) of this section), which shall state that such construction has been abandoned and that such building permit has been cancelled;

2. The applicant shall provide the director with any other evidence that the director shall require to substantiate the applicant's statements in such request; and
  3. Within thirty calendar days following the director's receipt of such written request, provided that the director is satisfied that such construction has been abandoned and that such building permit has been cancelled, the county will make such refund to the applicant of such fees paid, provided however, there shall not be any refund for the portion of such fees for the administration charges set forth in Section 17.90.090(A) herein. There shall not be any refund for any payment of the convenience fee, if previously paid.
- K. Information Required. Where the county for any development, including construction, within the unincorporated areas of Fresno County, or a relevant city for any development, including construction, within such city, respectively, is to issue a building permit for construction pursuant to this chapter, the applicant shall submit to the department, or the relevant city, respectively, such information as the department, or such city, respectively, may require to determine the amount due for ~~the~~ fees.

#### **17.90.070 - City collection of ~~the~~ fees.**

- A. Authorization of Cities to Collect ~~the~~ Fees. Where a relevant city has entered into a city-county MOU for such city's collection of ~~the~~ fees for and on behalf of the county within such city, such city-county MOU, including the county's notice to such city of the board's adoption of (or any amendments to) this chapter and of the effective date of this (or any amendments to this) chapter, pursuant to the terms of such city-county MOU, shall be sufficient authority of the county to require and authorize such city to collect ~~the~~ fees (including any updated fees, pursuant to Section 17.90.060(D) herein) for and on behalf of the county within such city, as provided under this chapter.
- B. Collection of ~~the~~ Fees. At the time required for an applicant's payment of ~~the~~ fees for construction within a relevant city, as provided in ~~subdivision subsection A(a)~~ of section 17.90.060-, herein, such city, for and on behalf of the county, shall collect the full amount of ~~the~~ fees set forth in the applicable schedule of fees, which is required to be paid under the provisions of this chapter, provided however, such city may satisfy the requirement to collect such fees by requiring the applicant to present a voucher or other form of written or electronic verification issued by the county evidencing the full payment of such fees directly to the county, or issued by a card issuer or processor under ~~subdivision (b)~~ subsection A of section 17.90.060-, herein, evidencing that such card issuer or processor has paid to, or caused payment to, the county the full amount of such fees. Any payment of ~~the~~ fees by an applicant to a city shall be deemed to be collected by such city for and on behalf of the county pursuant to this chapter. Notwithstanding anything to the contrary in this subdivision (b), any such city that issues a building permit for construction within such city during the "temporary suspension of fee collection," as provided in ~~subdivision (b)~~ subsection B of section 17.90.040, herein, shall not be required to collect such fees during the temporary suspension of fee collection, or during any period while fees are not established under this chapter.
- C. Remitting of ~~the~~ Fees by a City. Each city shall remit to the county, the sum of ~~the~~ fees (including any fees paid by an applicant under protest, under subsection F or G, as applicable, of Section 17.90.060 herein) collected by such city, for and on behalf of the

county, at the earliest time legally permissible to do so, subject to the provisions of subsection D of this section.

- D. Time for Remitting of ~~the~~ Fees by a City. Each city shall remit to the county auditor the sum of ~~the~~ fees collected by such city, on behalf of the county, not later than the fifteenth calendar day following the end of each calendar quarter, unless an MOU for a relevant city requires such city to remit such collected fees to the county at different intervals, in which case such city shall remit such collected fees to the county auditor at such different intervals pursuant to such MOU. While such fees collected are in any city's possession, as permitted in this subsection, such city may retain any interest income earned by any such fees, provided however, any such investment shall be at such city's sole risk, and all cities shall be responsible for the timely remittance to the county of the full sum of such fees collected. Such opportunity of the city to obtain such interest income, if any, shall be deemed to be the county's compensation to such city for such city's costs for collecting and remitting the sum of the fees to the county pursuant to this chapter.

#### **17.90.080 - Uses of ~~the~~ fees.**

- A. Allocation of ~~the~~ Fees. The county auditor shall establish separate capital facilities accounts corresponding to the respective categories of the types of county public facilities set forth in the initial-relevant impact fee report, and thereafter shall maintain, and modify as necessary, from county fiscal year to county fiscal year, such accounts corresponding to the respective categories of the types of county public facilities set forth in the relevant impact fee report. The county auditor shall allocate and deposit all collected fees into the accounts corresponding to the respective categories of the types of county public facilities identified in the relevant impact fee report. The amount of any fee so allocated to any such category shall be the portion of such fees attributable to such category of county public facilities under the relevant impact fee report. ~~The fees~~ Fees in such accounts shall not be commingled with other revenues and funds of the county, except for temporary investments. Any interest income earned by any fees in any such account also shall be credited to and deposited in such account, and shall be used only for the purposes of such account, except as otherwise provided under this chapter.
- B. Permitted Uses of Fees—Expenditure of Funds in Accounts. Except as otherwise provided in subsection (B)(1) or (B)(2) of this section: (i) funds in each of the accounts specified in subsection A of this section may be used for any and all purposes of determining the need for, planning, designing, developing, constructing, carrying to completion, equipping, furnishing, acquiring, expanding, refurbishing (as provided in this chapter), improving, and adding county public facilities, the types of which facilities will correspond to such account, and for administration charges provided in this chapter, and (ii) in no event shall any fees collected pursuant to this chapter (other than administration charges provided in this chapter) be used for any purpose other than the types of county public facilities described in the relevant impact fee report. Such funds may be expended, to the fullest extent permitted by law, for direct funding of county public facilities, to pay debt service on bonds or any all debt or similar instruments related to county public facilities, including, without limitation, lease payments related to financing county public facilities, and any payments related thereto, and to reimburse the county for any expenditures made at any time after the effective date of this chapter that are related to county public facilities.
  - 1. Upon approval by the board, funds may be advanced from any accounts specified in subsection A of this section to any other accounts specified in subsection A of this

section, and expended from the accounts to which they are transferred, where the advance is for county public facilities that the board determines to proceed with sooner than the types county public facilities to be funded by the accounts from which the advance is furnished, and where the advance will be repaid from future allocations of fees to the accounts receiving the advance, provided that: (i) prior to the board's authorization of any such advance, the department and the county auditor will jointly provide a written report to the board concerning the potential impacts that such advance may have on the accounts from which the advance is furnished, and the board will consider such report, (ii) the board shall specify the terms of the advance and the date on which the advance shall be repaid to the accounts from which the advance is furnished, and (iii) interest shall be charged on the advanced funds at the county's treasury pool rate, and in the same manner that the county auditor calculates the accrual of the county treasury pool rate on county investments in the county treasury pool. Notwithstanding the foregoing provisions of this subsection, funds shall not be advanced from any accounts to any other accounts where the advance would pay for costs of: (i) county public facilities other than land, buildings, public improvements to land or buildings, or community amenities that are to be affixed or improvements to any of the foregoing items, or (ii) county public facilities that exceed the applicable minimum standards of the types of county public facilities that are described in the relevant impact fee report, provided however, if there is a specific impact fee report that the board has utilized in making an adjustment to the fees pursuant to Section 17.90.060(F) herein, which has facilities standards that are lower than the facilities standards for the then-current impact fee report, the board may: (i) take into account the proportion of funds to be advanced that are affected by such specific impact fee report in relation to all of the funds to be advanced, or (ii) exclude from the advance the amount of such funds affected by such specific impact fee report.

2. Upon approval by the board, funds may be transferred between any accounts, and expended from the accounts to which they are transferred, where the transferred amount is used for a county public facility for which the county's actual costs attributable to development, as shown by subsequent evidence satisfactory to the board, exceeds the corresponding amount estimated by the relevant impact fee report, provided however, this subsection does not provide any authority to increase in any respect the aggregate amount of any fees payable by any development.

C. Government Code Requirements. The county auditor shall deposit, invest, and account for all fees received by the county under this chapter to the extent required under and pursuant to California Government Code, Section 66006, except where this chapter contains limitations in addition thereto.

D. Annual Report. Within one hundred eighty calendar days after the last day of each county fiscal year, the county auditor shall prepare and make available to the public an annual written report to the board with respect to ~~the~~ fees collected, allocated, expended, refunded (if any), or otherwise advanced or transferred between accounts referred to herein for public facilities to be constructed or acquired for such county fiscal year. The county auditor shall deliver such annual report to the board, and the board shall review, and may make any determinations as appropriate with respect to, the information in such annual report at the next regularly scheduled public meeting of the board not less than fifteen calendar days after such annual written report has been made available to the public, all to the extent required under and pursuant to California Government Code, Section 66006.

- E. Fifth Year Report. For the fifth county fiscal year following the first deposit of any fees into any accounts, in subsection A of this section, and every five years thereafter: (1) the county auditor shall prepare and deliver a written report to the board with respect to that portion of any such accounts remaining unexpended, whether committed or uncommitted, and (2) the board shall make all of the findings as appropriate with respect to such accounts, all to the extent required under and pursuant to subdivision (d) of Section 66001 of the California Government Code. When findings are required by this subsection, they shall be made by the board in connection with the annual report required by subsection D of this section. Except as provided in subsection F of this section, when sufficient funds have been collected, as determined by the board pursuant to subdivision (b)(1)(F) of Section 66006 of the California Government Code, to complete financing for any public facilities identified in the county's capital improvement plan, and such public facilities have not yet been constructed or acquired, the board shall identify, within one hundred eighty calendar days of such determination that sufficient funds have been collected, an approximate date by which the construction or acquisition of such public facilities will be commenced, or shall cause the county auditor to refund to the then-current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis, the unexpended portion of ~~the~~ fees, and any interest accrued thereon, as provided by California Government Code, Section 66001(e). By means consistent with the intent of this subsection, and subdivision (e) of Section 66001 of the California Government Code, the board may cause the county auditor to refund such unexpended fees, and any interest accrued thereon, by direct payment, by providing a temporary suspension of ~~the~~ fees, or by any other reasonable means determined by the board. Consistent with subdivision (e) of Section 66001 of the California Government Code, the determination by the board of the means by which such fees, and any interest accrued thereon, are to be refunded is a legislative act.
- F. Reallocation of ~~the~~ Fees. Notwithstanding the provisions of subsection E of this section, if the administrative costs of refunding unexpended fees, and any interest accrued thereon, pursuant to subsection E of this section, exceed the amount to be refunded, the board, after a public hearing, notice of which has been published pursuant to California Government Code, Section 6061 and posted in three prominent places within the area of the development project, may determine that such fees, and any interest accrued thereon, shall be allocated for some other purpose for which ~~the~~ fees are collected subject to this chapter and which serves the project on which ~~the~~ fees were originally imposed.
- G. Reference to Impact Fee Report. A determination whether or not a county public facility falls within any category in any impact fee report shall be made by the county with respect to the relevant impact fee report.

#### **17.90.090 - Administration.**

- A. Administration Charges. The board's reasonable estimated costs of administering this chapter, including but not limited to, the county's costs of collecting ~~the~~ fees, monitoring cities' collection and remittance of ~~the~~ fees to the county and the fee collection program, public reporting under this chapter, fee justification analysis, accounting, auditing, and legal services, county departmental support, and capital planning, programming, and project management for the portion of any county public facilities financed by ~~the~~ fees, is at least two and one-half percent of the fees, and such amount, which ~~is~~ shall be set forth in the ~~initial-relevant~~ impact fee report, ~~is hereby shall be~~ included as administration charges in the amount of ~~the any~~ fees set forth in Section 17.90.060(C) herein.

- B. Convenience Fee. The board, pursuant to Chapter 4.44 of this code will adopt, and from time to time thereafter may amend, a convenience fee, to be set forth in the county's master schedule of fees to be charged to an applicant for the applicant's use of its credit card or debit card to pay ~~the~~ fees, as provided in Section 17.90.060(B) herein. The convenience fee is to be charged separate from and in addition to ~~the~~ fees. Any convenience fees shall be deposited in an account, to be established by the county auditor, that is separate from the accounts established pursuant to Section 17.90.080(A) herein, and from any other accounts maintained by the county auditor.
- C. Modifications to Administration Charges and Convenience Fee. The board, from time to time, may, by ordinance, modify or terminate any charges related to administration of this chapter that are set forth in this section, or the convenience fee, as applicable, and establish additional charges related to the administration of this chapter, or to the applicant's use of its credit card or debit card to pay fees, as applicable.
- D. Additional Rules and Regulations. The board may adopt by resolution rules, regulations, guidelines, and procedures for the administration of this chapter. Upon request by any interested applicants, the department shall provide estimates of the fees payable by their developments. The department, the county assessor-recorder, and county auditor each may adopt such further rules or regulations not in conflict with this chapter or any action of the board, as may be appropriate to carry out this chapter.

**17.90.100 - Enforcement.**

- A. Civil Proceedings. The county counsel, or other legal counsel engaged by the county as may be required by the circumstances, may institute civil proceedings to enforce this chapter, including, but not limited to, actions for injunction and civil penalties, and other remedies. Construction without the authorization required by this chapter and the full payment of ~~the~~ fees, and the convenience fee (if an applicant used its credit card or debit card to pay ~~the~~ fees, as provided in Section 17.90.060(B) herein) required hereby may be suspended by a court of competent jurisdiction. Violation of this chapter interferes with provision of public services, and with the public's health and safety, and shall be a public nuisance.
- B. Costs of Securing Compliance. Any applicant not in compliance with this chapter shall be liable, in addition to other amounts provided for in this section, for all reasonable costs of the county securing compliance by such applicant, including the collection of the full amount of ~~the~~ fees, and the convenience fee (if an applicant used its credit card or debit card to pay ~~the~~ fees, as provided in Section 17.90.060(B) herein).
- C. Interest. Interest shall accrue on all fees not paid to the county or a relevant city, acting for and on behalf of the county, as provided in this chapter, when due pursuant to this chapter at the rate prescribed by law for interest on judgments, from the date when payment was due until the date payment is received in full by the county or such city. Interest also shall accrue on all convenience fees, if any, not paid to the county, when due pursuant to this code at the rate prescribed by law for interest on judgments, from the date when payment was due until the date payment is received in full by the relevant card issuer or processor.

**17.90.110 - Interpretation.**

This chapter and any subsequent amendments to this chapter shall be read together.

**17.90.120 - Severability.**

If any provision of this chapter, or its application to any person or entity, or to any circumstances, shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this chapter shall not be affected; the provisions of this chapter are intended to be severable. Subject to the foregoing provisions of this section, if the amount of any fees or charges payable under this chapter are held by a court of competent jurisdiction to be unlawfully excessive, invalid, or unenforceable, in part, the remainder of the fees and charges herein shall nonetheless be due and payable pursuant to the provisions of this chapter.

**SCHEDULE A — SCHEDULE OF FEES**

For the period beginning November 10, 2018, no fees are established under this chapter. At any time after November 10, 2018, the board may establish fees by ordinance amending this chapter.

Service Area and Land Use	County-wide Public Protection	General Government	Library	Health and Human Services	Sheriff Patrol & Investigation	County Parks	Admin. Charge (2.5%)	Total
<b>Unincorporated areas in County (except within Coalinga-Huron Library District*)</b>								
Residential	(Fee per Dwelling Unit)							
Single-Family Unit	\$1,644	\$1,424	\$485	\$417	\$257	\$65	\$107	\$4,399
Multi-Family Unit	\$1,208	\$1,046	\$356	\$306	\$189	\$48	\$79	\$3,232
Nonresidential	(Fee per 1,000 Building Square Feet)							
Retail	\$255	\$221	N/A	N/A	\$40	N/A	\$13	\$529
Office	\$370	\$320	N/A	N/A	\$58	N/A	\$19	\$767
Industrial	\$121	\$104	N/A	N/A	\$19	N/A	\$6	\$250
Warehouse	\$141	\$122	N/A	N/A	\$22	N/A	\$7	\$292
<b>Incorporated areas in Cities (except Coalinga and Huron,* and Kingsburg** and Clovis***)</b>								

Residential	(Fee per Dwelling Unit)							
Single Family Unit	\$1,644	\$664	\$485	\$417	N/A	\$65	\$82	\$3,357
Multi-Family Unit	\$1,208	\$488	\$356	\$306	N/A	\$48	\$60	\$2,466
Nonresidential †	(Fee per 1,000 Building Square Feet)							
Retail	\$255	\$103	N/A	N/A	N/A	N/A	\$9	\$367
Office	\$370	\$149	N/A	N/A	N/A	N/A	\$13	\$532
Industrial	\$121	\$49	N/A	N/A	N/A	N/A	\$4	\$174
Warehouse	\$141	\$57	N/A	N/A	N/A	N/A	\$5	\$203
<b>Unincorporated areas in County within Coalinga-Huron Library District*</b>								
Residential	(Fee per Dwelling Unit)							
Single Family Unit	\$1,644	\$1,424	*	\$417	\$257	\$65	\$95	\$3,902
Multi-Family Unit	\$1,208	\$1,046	*	\$306	\$189	\$48	\$70	\$2,867
Nonresidential †	(Fee per 1,000 Building Square Feet)							
Retail	\$255	\$221	N/A	N/A	\$40	N/A	\$13	\$529
Office	\$370	\$320	N/A	N/A	\$58	N/A	\$19	\$767
Industrial	\$121	\$104	N/A	N/A	\$19	N/A	\$6	\$250
Warehouse	\$141	\$122	N/A	N/A	\$22	N/A	\$7	\$292
<b>Incorporated areas in Cities of Coalinga and Huron,* City of Kingsburg,** and City of Clovis***</b>								

Residential	(Fee per Dwelling Unit)							
Single-Family Unit	\$1,644	\$664	*/**/**	\$417	N/A	\$65	\$70	\$2,860
Multi-Family Unit	\$1,208	\$488	*/**/**	\$306	N/A	\$48	\$51	\$2,104
Nonresidential †	(Fee per 1,000 Building Square Feet)							
Retail	\$255	\$103	N/A	N/A	N/A	N/A	\$9	\$367
Office	\$370	\$149	N/A	N/A	N/A	N/A	\$13	\$532
Industrial	\$121	\$49	N/A	N/A	N/A	N/A	\$4	\$174
Warehouse	\$141	\$57	N/A	N/A	N/A	N/A	\$5	\$203

~~\*—Coalinga-Huron Library District is outside of County’s Library system, and includes the cities of Coalinga and Huron, and some surrounding area not served by the County Library system.~~

~~\*\* In Kingsburg, the City of Kingsburg charges an existing library fee that is greater than the County’s library fee, above.~~

~~\*\*\* (Effective for Clovis commencing July 1, 2008) In Clovis, the City of Clovis’ library fee will be greater than the County’s library fee, above.~~

~~Refer to Ordinance Chapter 17.90 for the terms governing development fees charged by cities toward costs of County public facilities.~~

**SCHEDULE B —  
PUBLIC FACILITIES IMPACT FEES  
COST INDEX FORMULA**

~~For the period beginning November 10, 2018, no fees are established under this chapter. At any time after November 10, 2018, the board may establish fees by ordinance amending this chapter. The cost index formula for the County of Fresno facilities impact fees is a composite of the following annual inflation/escalation cost factors in items (1) and (2), respectively:~~

- ~~(1) —The latest December monthly building cost index published by the Engineering News-Record (“ENR Index”) compared to the ENR Index for the corresponding same month in the prior calendar year (or if no ENR Index is published for either or both such~~

~~months, then ENR Index for the immediately preceding month(s) when such ENR Index was published, as applicable).~~

- ~~(2) The latest December monthly Consumer Price Index (“CPI”) published by the Bureau of Labor Statistics for the City of San Francisco (which CPI may include other cities or areas with the City of San Francisco) compared to the CPI for the corresponding same month in the prior calendar year (or if no CPI is published for either or both such months, then the CPI for the immediately preceding month(s) when such CPI was published, as applicable).~~

~~The foregoing cost index formula is further discounted by 15% as a location factor for Fresno County. The ENR Index will reflect the annual inflation/escalation cost factors for land and buildings component of the County facilities, and the CPI will reflect the annual inflation/escalation cost factors for computers, library volumes, and vehicles, respectively.~~

~~Under the initial impact fee report prepared for the County by MuniFinancial, dated February 17, 2006, the total initial value of County facilities for which the maximum justifiable fees initially could be imposed upon development is \$959,734,028, which includes \$861,061,728 (89.71%) for land and buildings and \$98,672,300 (10.28%) for computers, library volumes, and vehicles. Consequently, the foregoing cost index formula will be 89.71% of ENR Index and 10.28% of CPI to reflect the proportion in the foregoing initial County facilities values, respectively.~~

~~How to annually calculate the cost index formula: Using year December, 2007 as an example, the cost index formula produces the following allowable maximum annual increases in County facilities impact fees, when using the cost index formula:~~

~~ENR Index~~