



**RESOURCE MANAGEMENT
AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: June 21, 2011 - REVISED

Public Hearing Required	Yes	☒	No	☐	N/A	☐
Scheduled Public Hearing w/Clerk	Yes	☒	No	☐	N/A	☐
Published Notice Required	Yes	☐	No	☒	N/A	☐
Advertised Published Notice	Yes	☒	No	☐	N/A	☐
Meet & Confer Required	Yes	☐	No	☒	N/A	☐
Electronic file(s) has been sent	Yes	☒	No	☐	N/A	☐
Budget Transfer (Aud 308) attached	Yes	☐	No	☒	N/A	☐
Personnel Resolution attached	Yes	☐	No	☒	N/A	☐
Resolution, Ordinance or Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s) Yes ☒ No ☐ N/A ☐						
CONTACT PERSON: Celeste Perez PHONE: (559) 624-7000						

SUBJECT: Legislative Authority To Collect Development Impact Fees/Traffic Facilities Impact Fees

REQUEST(S):

That the Board of Supervisors:

June 21, 2011

1. Introduce and waive the first reading of an Ordinance adding Chapter 25 to Part 1 Government and Administration of the Ordinance Code of Tulare County, Pertaining to County Traffic Facilities Impact Fees in the Incorporated and Unincorporated Areas of Tulare County.
2. Set a Public Hearing for July 12, 2011.
3. Approve the Summary of the Ordinance and direct the Clerk of the Board to publish the summary and post a certified copy of the complete ordinance five (5) days prior to the Ordinance adoption.

July 12, 2011

1. Hold a Public Hearing.
2. Waive the second reading and adopt Ordinance adding Chapter 25 to Part 1 Government and Administration of the Ordinance Code of Tulare County, Pertaining to County Traffic Facilities Impact Fees in the Incorporated and Unincorporated Areas of Tulare County.
3. Direct the Clerk of the Board of Supervisors to publish the adopted summary of the Ordinance and to post certified copy of the full ordinance with the names of the Board of Supervisors voting for and against within (15) days of adoption.

SUBJECT: Legislative Authority To Collect Development Impact Fees/Traffic Facilities Impact Fees

DATE: June 21, 2011

SUMMARY:

On November 30, 2010, your Board conducted a public hearing and adopted Resolution No. 2010-0927 requiring future development to participate in the Tulare County Development Impact Fee Program. On March 22, 2011, the Board Agenda proposed adoption of Chapter 25 to Part 1 Government and Administration of the Ordinance Code of Tulare County, Pertaining to County Traffic Impact Fees in the Incorporated and Unincorporated Areas of Tulare County. The Board continued the item to June 21, 2011. At the March hearing representatives from Visalia, Home Builders Association (HBA), and others spoke on the matter and requested that the item not be adopted. HBA submitted a letter dated, March 22, 2011, and identified concerns relating to the ordinance as presented to the Board. Staff provided a response to the HBA letter and has made some modifications to the proposed ordinance.

Fee Studies Outreach:

April 27 and April 29, 2011: RMA staff has conducted four workshops to date; April 27, 2011 on the Public Facilities Fee and April 29, 2011 on the Traffic Impact Fee Studies. These two workshops focused on the City representatives and the Visalia Chamber of Commerce. It was suggested by those in attendance that the development community – primary contactors and builders from each city should be contacted and give the opportunity to participate in the Development Impact Fee program being proposed by the County. RMA staff contacted each city as well as HBA and received their listing of contractors and builders.

June 10, 2011: The workshop conducted on June 10, 2011 presented the Traffic Impact Fee Study at 9:00 A.M and the Public Facilities Fee Study at 10:30 A.M. In addition, a schedule of the Development Impact Fee process was presented. Approximately 450 mailings of the notice was distributed on May 20, 2011 and on June 2, 2011 approximately 950 mailings occurred.

FISCAL IMPACT/FINANCING:

Impact to the General Fund is estimated at \$2,000 for public hearing notices and distribution of related information material.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five year strategic plan includes the "Economic Well being Initiative - to promote economic development opportunities, effective growth management and a quality standard of living." The proposed Development Impact Fees will ensure that new development in Tulare County will pay its fair share of needed new services and facilities.

SUBJECT: Legislative Authority To Collect Development Impact Fees/Traffic
Facilities Impact Fees

DATE: June 21, 2011

ALTERNATIVES:

1. The Board could choose not to consider or adopt legislative authority to collect Development Impact Fees.
2. The Board could choose to refer the matter back to staff for further discussion and analysis and return to the Board prior to taking action.

INVOLVEMENT OF OTHER DEPARTMENTS OR AGENCIES:

Tulare County Administrative Office, Fire, Sheriff, Library, Courts, Parks, Facilities, and incorporated cities.

ADMINISTRATIVE SIGN-OFF:



Jake Raper, Jr. AICP
Director

cc: Auditor/Controller
County Counsel
County Administrative Office (2)

Attachment(s)

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF LEGISLATIVE AUTHORITY)
TO COLLECT DEVELOPMENT IMPACT FEES/) RESOLUTION NO. _____
TRAFFIC FACILITIES IMPACT FEES) ORDINANCE NO. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD ON JUNE 21, 2011,
BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Introduced and waived the first reading of an Ordinance adding Chapter 25 to Part 1 Government and Administration of the Ordinance Code of Tulare County, Pertaining to County Traffic Facilities Impact Fees in the Incorporated and Unincorporated Areas of Tulare County.
2. Set a Public Hearing for July 12, 2011.
3. Approved the Summary of the Ordinance and directed the Clerk of the Board to publish the summary and post a certified copy of the complete ordinance five (5) days prior to the Ordinance adoption.

BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF LEGISLATIVE AUTHORITY
TO COLLECT DEVELOPMENT IMPACT FEES/
TRAFFIC FACILITIES IMPACT FEES

)
) RESOLUTION NO. _____
) ORDINANCE NO. _____

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD ON JULY 12, 2011
BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Held a Public Hearing.
2. Waived the second reading and adopted Ordinance adding Chapter 25 to Part 1 Government and Administration of the Ordinance Code of Tulare County, Pertaining to County Traffic Facilities Impact Fees in the Incorporated and Unincorporated Areas of Tulare County.
3. Directed the Clerk of the Board of Supervisors to publish the adopted summary of the Ordinance and to post certified copy of the full ordinance with the names of the Board of Supervisors voting for and against within (15) days of adoption.

PROPOSED SUMMARY OF ORDINANCE

ORDINANCE NO. _____

PURSUANT TO GOVERNMENT CODE SECTION 25124(B)(1), THE FOLLOWING IS A SUMMARY OF ORDINANCE NO. _____ ADDING CHAPTER 25 TO PART I (GOVERNMENT AND ADMINISTRATION) OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO COUNTY TRAFFIC FACILITIES IMPACT FEES IN THE INCORPORATED AND UNINCORPORATED AREAS OF TULARE COUNTY.

SUMMARY OF ORDINANCE

This Ordinance is legislative authority to collect Traffic Facilities Development Impact Fees. The fees collected under this Ordinance will go toward traffic facilities and infrastructure for county-wide services and services provided by the County to City residents. The County will set any fees collected under this Ordinance in accordance with the Mitigation Fee Act as set out in the California Government Code, section 66000 et seq., as amended from time to time. This Ordinance properly limits use of all fees collected to traffic facilities, improvements, fixed assets and furnishings attributable to new development, and further limits use of fees to specific categories of facilities and improvements until and unless subsequent evidence justifies reallocation.

The purpose of the fees required by this Ordinance is to pay for costs of additional traffic facilities, improvements, fixed assets and furnishings used to provide county-wide services and services provided by the County to City residents as described in any impact fee studies or reports, capital improvement plans, or other studies or reports which will be prepared from time to time by or at the direction of the County in compliance with the Mitigation Fee Act.

Fees collected under this Ordinance will be used to fund traffic facilities and infrastructure required to furnish the services more specifically described in the studies, reports or plans mentioned in subsection (h) of the Ordinance. These services and traffic facilities will be needed as a result of the additional residents and employees in the developments which pay the fees.

This Ordinance is exempt from review under CEQA pursuant to California Public Resources Code section 21080(b)(8) and CEQA Guidelines section 15273(a)(4). This Ordinance does not contemplate, identify, change or approve expansion of the area for which County services are provided.

The ordinance summarized above is anticipated to be adopted by the Tulare County Board of Supervisors on July 12, 2011 and shall take effect thirty (30) days from the date of adoption.

Within fifteen (15) days of adoption, a certified copy of the full text of the ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

COUNTY OF TULARE

By _____
Mike Ennis, Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors
of Tulare County

By _____

ORDINANCE NO.

AN ORDINANCE ADDING CHAPTER 25 TO PART I GOVERNMENT AND
~~ADMINISTRATION OF THE ORDINANCE CODE OF TULARE COUNTY~~, PERTAINING
TO COUNTY TRAFFIC FACILITIES IMPACT FEES IN THE INCORPORATED AND
UNINCORPORATED AREAS OF TULARE COUNTY.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS
FOLLOWS:

Section 1. Chapter 25, entitled ~~Traffic Facilities Impact Fees~~, is added to Part I of the
Ordinance Code of Tulare County to read as follows.

Chapter 25. Traffic Facilities Impact Fees

Article 1. General Provisions

Section 1-25-1000. Findings.

The Board of Supervisors makes the following findings:

(a) The Board of Supervisors and Tulare County ("County") staff have observed and continued to express concern that new residential, commercial, industrial and manufacturing development in the County places increasing demands on a variety of County traffic facilities and infrastructure.

(b) County traffic facility and infrastructure needs have grown as the population of the County has grown in the past, and will continue to grow at least as fast as the population increases. New residents and employees are likely to require the same services as the County now provides to existing residents and employees.

(c) Funding sources for County traffic facilities and infrastructure such as property taxes and Federal Revenue Sharing funds have been substantially reduced so that these funding sources are no longer adequate to met demands by such new development.

(d) Such new development creates a need for new traffic facilities and infrastructure including but not limited to new and improved roads and bridges as well as other infrastructure to accommodate growth in the County.

(e) Historically 75% to 85% of new development and population growth in Tulare County has been directed to incorporated cities. It is determined that such new development and

population growth within the Cities make demands upon, impacts and creates the need for new or expanded County facilities and infrastructure (described subsection (d)) and that to this point, this new development has not borne its fair share of the costs for additional County traffic facilities. **2010 Census information has confirmed that over 95% of growth occurring within Tulare County is within the incorporated cities.** It is determined that such new development should pay the costs for this increased need. Otherwise, the costs of these traffic facilities and infrastructure will be unfairly borne by only those residing in the unincorporated areas of the County while City residents receive the same County service and/or require County services, or will unfairly reduce the level of service provided to present County and City residents. In order to recover its costs resulting from development within cities, **pursuant to agreement with a City set forth in Article 7**, the County may exercise authority over that development, solely to the extent of requiring payment of a fee.

(f) Fees collected under this Chapter will go toward traffic facilities and infrastructure for County-wide services and services provided by the County to City residents. The most conservative judgment supports the finding that facilities of at least the type provided for by this Chapter will be needed as well as facilities that may be identified through future studies. The County will set any fees collected under this Chapter in accordance with the Mitigation Fee Act as set out in the California Government Code, Section 66000 et seq., as amended from time to time.

(g) This Chapter properly limits use of all fees collected to traffic facilities, improvements, fixed assets and furnishings attributable to new development, and further limits use of fees to specific categories of facilities and improvements until and unless subsequent evidence justifies reallocation.

(h) The purpose of the fees required by this Chapter is to pay for costs of additional traffic facilities, improvements, fixed assets and furnishings used to provide County-wide services and services provided by the County to City residents as described in any impact fee studies or reports, capital improvement plans, or other studies or reports which will be prepared from time to time by or at the direction of the County in compliance with the Mitigation Fee Act.

(i) The fees received pursuant to this Chapter are to be used to assess the need to plan, design, construct, develop, lease-purchase and otherwise acquire the traffic facilities, infrastructure, improvements, fixed assets and furnishings identified in the studies, reports or plans mentioned in subsection (h).

(j) Fees collected under this Chapter will be used to fund traffic facilities and infrastructure required to furnish the services more specifically described in the studies, reports or plans mentioned in subsection (h). These services and traffic facilities will be needed as a result of the additional residents and employees in the developments which pay the fees.

(k) 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 it provides that, if and when development is approved, under whatever laws and policies are otherwise in effect, that development will be subject to fees as provided in this Chapter. This

Chapter does not approve or foreordain approval of any traffic facilities nor mandate or alter the level of facilities to be constructed. Therefore, further review of this ordinance under the California Environmental Quality Act ("CEQA") is not required.

(l) ~~This Chapter is also exempt from review under CEQA pursuant to California Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 1527.3(a)(4).~~ This Chapter does not contemplate, identify, change or approve expansion of the area for which County services are provided.

(m) The cities do not provide the identified traffic facilities and the related services.

Section 1-25-1005. Definitions.

(a) "Construction" for which fees apply means all residential, multi-family, commercial, office, retail, wholesale, industrial and manufacturing buildings, structures and operations, as defined in the applicable building and/or zoning ordinances of each city in Tulare County and in the building and zoning ordinances of the County.

(b) "Exempt construction" means (1) those projects for which a building permit was issued prior to the effective date of this Chapter, (2) projects which do not otherwise require the payment of city traffic impact fees due to their minor nature, or (3) that construction exempted by Section 1-25-1115.

(c) "City" or "Cities" shall mean each incorporated city or collectively cities within Tulare County.

(d) "County Auditor" shall mean and refer to the Tulare County Auditor-Controller/Treasurer-Tax Collector/Registrar of Voters.

(e) "Transaction Fee - Convenience fee" means a monetary charge 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 as may be established.

Section 1-25-1015. Severability.

If any provision of this Chapter, the ordinances adopting or amending this Chapter or its application to any person or circumstances, are held invalid or unenforceable by a court of jurisdiction, the remainder of this Chapter or the ordinances adopting or amending this Chapter shall not be affected. The provisions of this Chapter and the ordinances adopting or amending this Chapter are intended to be severable. If the amount of any fee payable under this Chapter is held excessive, or invalid or unenforceable in part, the remainder of the fee shall nonetheless be due and payable.

Article 3. Traffic Impact Fees

Section 1-25-1100. Imposition of Fees.

After the effective date of this Chapter and the effective date of the fee(s) set out in the resolution(s) imposing the fee(s), all construction within the **incorporated Cities with an agreement with the County pursuant to Article 7** and unincorporated territory of Tulare County not otherwise exempt pursuant to the provisions of this Chapter shall be subject to and pay the County traffic facilities fee(s) established in this Chapter and by County resolution(s). Such development fee(s) shall be paid and collected as provided in Sections 1-25-1105 and 1-25-1110 and Article 7 of this Chapter. Construction and development shall not be otherwise regulated under this Chapter.

Section 1-25-1105. Payment of Fee(s).

(a) Time for Payment of Fee(s). Fee(s) for applicable development shall be paid prior to the issuance of the certificate of occupancy, or at the time of final inspection, whichever comes first, or, if the provisions of Government Code Section 66007, as amended from time to time, are met at the time of issuance of a building permit for any non-exempt construction under the provisions of this ordinance.

(b) Fee Amounts. Except to the extent reduced by an in-lieu contribution approved pursuant to Section 1-25-1120, which in-lieu contribution will only apply to development of County facilities, fees under this section shall be payable in those specific amounts set by County resolution. The amount payable shall be reduced by the amount of any fee charged to the developer or builder by any other jurisdiction to provide funding for the same County facilities. During the first five calendar years beginning after effective date of the fee set by the resolution imposing the fee, the Board of Supervisors may, without a further study, report or plan, adjust by resolution the fee amounts one time annually based on the percentage change in the Engineering News Record Construction Cost Index. Thereafter, the Board of Supervisors may amend the amount of such fees time to time by Board resolution after appropriate further study, report or plan.

Section 1-25-1110. Demolition or Destruction Offset.

(a) Pursuant to Government Code § 66010 et. seq., no fee may be applied by a local agency to the reconstruction of any residential, commercial or industrial development project that is damaged or destroyed as a result of a natural disaster as declared by the Governor.

(b) Where a building permit is issued within two years after demolition on the same lot of any building or structure which could be lawfully occupied, or where new construction replaces a structure on the same lot which was damaged or destroyed by fire, earthquake or other causes similarly beyond the owner's control and not declared a natural disaster by the Governor, the amount of new construction taken into account under this Chapter shall in the case of non-

residential building or structure be reduced by the number of square feet which were demolished or destroyed. In the case of a residential building or structure, there shall be no fee imposed under either of the above-described circumstances except where reconstruction exceeds construction that is substantially equivalent to the residential building or structure or where additional residential units are proposed on the site.

(c) If the County abates a public nuisance and requires real property to be demolished or reconstructed, no fee may be applied to the reconstruction, if commenced within two years of the real property in compliance with County codes except where reconstruction exceeds construction that is substantially equivalent to the real property.

Section 1-25-1115. Exemptions.

The following construction or development activities shall be exempt from the fees imposed through Section 1-25-1100:

(a) Any building, structure, or other improvement constructed or renovated by the County or City upon property owned by or under its control.

(b) Any building, structure, or other improvement constructed or renovated that does not require the issuance of a building permit.

(c) Any initial equipment or piece of equipment and other initial, unfunded costs necessary to service new growth or new development.

(d) Construction qualifying as a detached building or structure intended for exclusive agricultural uses and complies with the following:

1. The building or structure 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
2. The building or structure will not be on commercial, industrial or manufacturing zoned land, or on land where a land use application has been approved for use as a commercial, industrial or manufacturing use; and
3. The 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.

(e) Existing residential unit remodel, replacement, or re-construction that does not create any new separate dwelling unit or units on a lot.

(f) Construction for the erection or installation of any temporary building, structure, or improvement (i) which, under the terms of any permit issued therefore or pursuant to such other assurance as the appropriate County or City official (i.e., Director of the Resource Management Agency), or designee, for construction in the unincorporated areas of the County, or City building official, or designee for construction in the relevant City, respectively) may

require, may be maintained for a total period not to exceed one (1) year or as may be extended beyond one year, or (ii) for use in the performance of the work of a construction project until completion of such work.

(g) ~~Building permit issued prior to the effective date of this Chapter and the effective date of the development impact fee(s).~~

(h). Where said fees are prohibited by state law.

Section 1-25-1120. In-lieu Contribution.

The County may authorize **in-lieu contribution**, for affected development within the unincorporated areas of the County. **Such in-lieu contribution shall be** in connection with approval of a subdivision map or any other discretionary development approval subject to a required public hearing before any agency of the County. **The substitution of completed facilities or other contribution of at least equivalent value to the traffic facilities fee is required .** The facilities or other contribution must reduce the need for new County traffic facilities in one or more of the areas specifically identified in the resolution **approving the subdivision map or discretionary development approval**. Where the facilities or other contribution exceed **the value of the fee amount**, the County may (but shall not be required to) credit the excess value against future traffic facilities fees.

Section 1-25-1125. Information Required.

Where the County is to issue a building permit, the applicant liable for the fee shall submit to the Tulare County Resource Management Agency such information as the Agency may require to calculate the amount due, or, where a City certifies square footage and use, or number of dwelling units, pursuant to Article 7 hereof, the information necessary to calculate the fee shall be submitted to the City by the applicant.

Article 5: Administrative Appeal and Protest of Imposition of Fee(s)

Section 1-25-1200. Administrative Appeal to the Board of Supervisors

Any applicant, builder or developer may appeal to the Board of Supervisors pursuant to Tulare County Ordinance Code Section 165, the decision or action of a Tulare County agency, office or employee to impose a fee upon the applicant, builder or developer under the provisions of this Chapter. Upon final decision by the Board of Supervisors, the applicant, builder or developer may protest the imposition of the fees pursuant to this Article the provisions of Government Code section 66020 et seq.

Section 1-25-1205. Protest of Imposition of Fee(s)

Any applicant, builder or developer may protest the imposition of any fee imposed under the provisions of this Chapter by meeting the following requirements:

(a) Tendering any required payment in full or providing satisfactory evidence of arrangements to pay the fee when due or to ensure performance of the conditions necessary to meet the requirements imposed.

(b) Serving written notice on the Clerk of the Tulare County Board of Supervisors, which notice shall contain all of the following information:

(1) A statement identifying the development, construction or application affected, including the name of the applicant, developer or builder and contact information sufficient to allow contact by phone and mail, and a copy of the receipt evidencing payment of the appeal fee.

(2) A statement that the required payment is tendered, or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest.

(3) A statement informing the Board of Supervisors of the factual elements of the dispute and the legal theory forming the basis of the protest.

Section 1-25-1210. Time In Which to Protest.

The protest must be filed no later than 90 days after the date of the Board of Supervisor's final decision on the imposition of the fee.

Section 1-25-1215. Protest Procedure.

Where a protest has been filed in compliance with these provisions, the protest resolution procedure shall be as set forth under the provisions of Government Code Section 66020 et seq., as amended from time to time.

Article 7. Collection of Fees

Section 1-25-1300. City Collection of Fees.

(a) Each incorporated City within the County of Tulare shall, pursuant to a separate agreement entered into between that City and the County to collect the fee or fees required under the provisions of this Chapter, and in the amount as may be set from time to time by County resolution, on behalf of the County. The City will collect a fee for all non-exempt construction or development pursuant to provisions of this Chapter and the County resolution(s) adopting or modifying the fee or fees from time to time, at the time of the issuance of a

certificate of occupancy or upon final inspection, whichever occurs first, or if the provisions of Government Code Section 66007 are met, at the time of issuance of a building permit.

(b) Alternatively, a City may provide that such fees are collected by requiring the applicant to present a voucher or other form of written or electronic verification issued by the County evidencing that the full payment of such fees directly to the County has occurred before issuance of a certificate of occupancy or upon final inspection, whichever occurs first, or if the provisions of Government Code Section 66007 are met, at the time of issuance of a building permit.

Section 1-25-1305. Remitting of Fee(s) by City.

Each City shall remit to the County Auditor, on a quarterly basis, the sum of those fees collected during that quarter. The quarter shall be based upon a County fiscal year quarter. The fees shall be remitted within 15 days of the end of the quarter. The remittance shall be less any administrative charges as set out in Section 1-25-1310.

Section 1-25-1310. Administrative Charge for City.

Each City which collects the County traffic facilities fee(s) pursuant to Section 1-25-1300 and pays the fee to the County Auditor pursuant to Section 1-25-1305 shall be entitled to retain an administration charge for its collection services in an amount not to exceed 2.5% of the Traffic Impact Fee charged or as may be determined by agreement between the County and City. The agreement entered into between the County and the City shall contain specific provisions related to the amount of the city administration charge. If a city fails to collect the fee or fees required under the provisions of this Chapter in incorporated areas, the County may exercise its legal rights to collect such fee or fees.

Section 1-25-1315. Mutual Indemnification.

A city shall hold harmless, defend and indemnify the County, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including County property, arising from, or in connection with, the performance by the City or its agents, officers and employees under this Chapter or implementation of the impact fee collection system in that City pursuant to agreement between the City and County or otherwise.

The County shall hold harmless, defend and indemnify a City, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including the City's property, arising from, or in connection with, the performance by the County or its agents, officers and employees under this Chapter or implementation of the impact fee collection system in that City pursuant to agreement between the City and County or otherwise.

Section 1-25-1315. County Collection of Fees.

The County shall collect the fee or fees imposed under the provisions of this Chapter, and in the amount as may be set from time to time by County resolution, in the ~~unincorporated~~ areas of the ~~County and may collect such fee or fees in any Cities in which the County acts on the City's~~ behalf to issue building permits, make final inspections or issue certifications of compliance upon City concurrence by agreement or resolution. The County will collect a fee for all non-exempt construction or development pursuant to provisions of this Chapter and the County resolution(s) adopting or modifying the fee or fees from time to time, at the time of the issuance of a certificate of occupancy or upon final inspection, whichever occurs first, or if the provisions of Government Code Section 66007 are met, at the time of issuance of a building permit. If a City fails to collect the fee or fees required under the provisions of this Chapter in incorporated areas, the County may exercise its legal rights to collect such fee or fees.

Section 1-25-1325 County ~~Waiver of or Reduction of or Deferment of Fees~~

The County may waive fees **or reduce fees or deferment of fees** pursuant to this Chapter by resolution or impose a moratorium on collection of fees for a specified, limited amount of time.

Article 9. Use of Fees.

Section 1-25-1400. Fee Allocation.

The County Auditor shall allocate all fees received into accounts corresponding to the categories of facilities shown in County resolution adopting the fee(s). The amount so allocated shall be the fee amount attributable to the respective category of facilities under the resolution adopting the fee(s) (as it may be adjusted from year to year). The County Auditor shall maintain such accounts from year to year.

Section 1-25-1405. Use Limitation.

Amounts in each of the accounts shall be expended exclusively to determine the necessity of, plan, design, carry to completion, acquire or lease-purchase expanded or additional traffic facilities of the type corresponding to that fund, except as provided in subsections (a) and (b) below. In no event shall any fee collected pursuant to this Chapter (other than an administrative or processing charge) be expended for any purpose other than expanded or additional traffic facilities described in the resolution adopting the fee(s).

(a) Funds may be advanced from one account to another where the advance is for traffic facilities which are proceeding sooner than those traffic facilities to be funded by the account from which the advance is furnished, and where the advance will be repaid from future fee revenue allocations to the account receiving the advance. **The County may require interest be paid for the use of advanced funds from one account to another.**

(b) Funds may be transferred between accounts where the transferred amount is used for a traffic facility for which the actual cost attributable to new development as shown by

subsequent evidence exceeds the corresponding amount estimated by any impact fee studies or reports, capital improvement plans, or other studies or reports which will be prepared from time to time by or at the direction of the County in compliance with the Mitigation Fee Act, provided that this subsection provides no authority to increase in any respect the aggregate fee amount payable by any development.

Section 1-25-1410. Government Code Requirements.

The County Auditor shall deposit, invest and account for all fees received under this Chapter to California Government Code section 66006 (and any successor provision) as amended from time to time. Fees received under this Chapter and not expended or committed within five years after receipt shall be refunded pursuant to California Government Code Section 66006 (and any successor provision) as amended from time to time, unless the County otherwise complies with the requirements of Section 66006.

Section 1-25-1415. ~~Reference to Impact Fee Reports, Plans or Studies.~~ A determination as to whether a facility falls within any category in any of the impact fee studies or reports, capital improvement plans, or other studies or reports which will be prepared from time to time by or at the direction of the County in compliance with the Mitigation Fee Act shall be made with reference to the particular report, plan or study and, if necessary, its background information.

Section 1-25-1420. Annual Report.

An annual report shall be prepared by the County Auditor to account for the use of all the fees collected under this Chapter. This report shall be prepared pursuant to the provisions of Government Code Section 66006 and shall be maintained in the Office of the County. Copies shall be provided to and kept on file at the Office of the Clerk of the Board of Supervisors and at the Tulare County Resource Management Agency – Administration Branch. Copies shall be provided to the City Managers of the individual Cities upon request. The Cities will provide any fiscal information relative to the collection of these fees that is requested by the County Auditor in order to facilitate the preparation of the annual reports.

Article 11. County Administration.

Section 1-25-1500. Administrative Charges.

(a) The County Auditor shall determine the estimated costs of administration of this Chapter and may recommend to the Board of Supervisors a charge to recover those costs. Initially, costs shall be estimated and the Board may establish a charge separately, by resolution, for at least the following two types of administration:

(1) Administration through a City which collects and pays over to the County the County Facilities Fee pursuant to Article 7. In lieu of an administrative charge based upon the calculations set forth herein, a City may elect to retain the interest earned on those fees collected while the City retains the fees prior to remittance within 15 days of the end of each quarter.

(2) Administration by the County, including any additional costs resulting from implementing a County review process to identify applicable developments and carry out this Chapter, or from analysis by the County, not otherwise required, of the number of dwelling units or use or square footage of a development, in order to determine the amount of the facilities fee payable.

(b) The Board of Supervisors, may by resolution, modify or terminate any charge set under this section and may establish additional charges related to administration of this Chapter.

Section 1-25-1505. Transaction Fee or Convenience Fee.

The County Auditor shall determine the cost, which includes the cost that a card issuer or processor will charge, to the County to allow an applicant, for the applicant's convenience, to use a credit card or a debit card to pay the fee(s) required by this Chapter, pursuant to any card payment program that may be established and shall recommend to the Board of Supervisors a charge to recover these costs. Initially, costs shall be estimated and the Board may establish a separate fee or charge, by resolution, for this convenience to the applicant.

Section 1-25-1510. Additional Rules and Regulations.

The Board of Supervisors may adopt by resolution rules, regulations, guidelines and procedures for administration of this Chapter. The Tulare County Resource Management Agency shall provide estimates of fees payable by impacting developments. The Tulare County Resource Management Agency, the Tulare County Assessor/Clerk-Recorder, and the County Auditor may each adopt such further rules or regulations not in conflict with any action of the Board of Supervisors as may be appropriate to carry out this Chapter.

Article 13. Enforcement.

Section 1-25-1600. Civil and Administrative Proceedings.

The County Counsel may institute civil proceedings to enforce this Chapter, including without limitation actions for injunction, civil penalties, and public nuisance. Construction without the authorization required by this ordinance and the payment of the fees required hereby may be suspended by a court of competent jurisdiction. Violation of this Chapter interferes with provision of public services and shall be a public nuisance. The County may pursue administrative fines and penalties pursuant to Chapter 23 of Part I – Government and Administration of the Tulare County Ordinance Code or as otherwise provided by law.

Section 1-25-1605. Costs of Securing Compliance.

Any person or entity not in compliance with this Chapter shall be liable, in addition to other amounts provided for in this Article, for attorneys' fees, or the reasonable costs of staff legal services incurred by the county, and all other reasonable costs of securing compliance, including the collection of any fees imposed pursuant to this Chapter.

Section 1-25-1610. Interest.

Interest shall accrue on all fees not paid 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.

Section 2. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the _____, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the ____ day of _____, 2011, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES:

NOES:

ABSENT:

Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors
of the County of Tulare

By:

Deputy