

Chapter 13.17 BENEFIT ASSESSMENT FEE FOR GATEWAY OF THE AMERICAS SPECIFIC PLAN AREA PUBLIC IMPROVEMENTS

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13.17.010 Findings and intent.

The board of supervisors of the county of Imperial finds, determines and declares that:

A.

On August 26, 1997, the board of supervisors of the county of Imperial, adopted Resolution No. 97-094 (Minute Order No. 24B) approving the Gateway of the Americas Specific Plan (the "Specific Plan"). The specific plan includes an area of approximately one thousand seven hundred seventy-five (1,775) gross acres which are bounded on the west by the Ash Canal, on the north by a line parallel to and approximately one-quarter mile north of the centerline of State Route (SR) 98, on the east by the west bank of the Alamo River, and on the south by the northern right-of-way of the All American Canal, which are more specifically depicted on Exhibit A, which can be found on file in the office of the city clerk.

B.

Except for government uses on certain properties, the properties within the specific plan area are currently used for agricultural purposes.

C.

The specific plan identifies the "backbone infrastructure systems" for the specific plan area. The backbone infrastructure system consists of the shared infrastructure facilities that are necessary for commercial and industrial development and benefit all of the land within the specific plan area. The backbone infrastructure systems consists of the backbone roadway system,

backbone water system, backbone sewer system, and the backbone drainage system.

D.

Additionally, there is the South Alamo Canal relocation and other specific infrastructure projects described in the specific plan that are necessary for the commercial and industrial development in the specific plan area.

E.

Lastly, there are certain traffic improvements outside of the specific plan area necessary to mitigate the impacts of development within the specific plan area that are required for commercial and industrial development within the specific plan area.

F.

The backbone infrastructure systems, the South Alamo Canal relocation, the specific infrastructure projects described in the specific plan and the traffic improvements shall be known collectively as the "improvements". The term improvements shall include such revisions and additions to the improvements described in the specific plan as are necessary and convenient to implement the specific plan.

G.

It is the intent of the board of supervisors to require every person who develops land within the specific plan area to contribute their fair share of the costs of the improvements.

H.

It is the intent of the board of supervisors in enacting the ordinance codified in this chapter that the amount of any benefit fee collected pursuant to the ordinance codified in this chapter shall be limited to the cost of public facilities attributable to the demand for such facilities created by the new developments within the specific plan area and that the benefit fee shall not exceed the costs of acquiring, constructing and installing the improvements.

I.

It is the intent of the board of supervisors that there shall be a reasonable relationship between the benefit fee and the type of development project on which the benefit fee is imposed.

J.

The county is authorized to establish a benefit fee pursuant to the provisions of the Mitigation Fee Act, Government Code Sections 66000 through 66025. The county shall establish such benefit fees from time to time by resolution of the board of supervisors pursuant to this chapter and the Mitigation Fee Act.

13.17.020 Payment of the benefit fee required for commercial and industrial development within the specific plan area.

Except as provided in Sections [13.17.030](#) and [13.17.040](#), a developer of a parcel of property within the specific plan area shall pay a benefit fee to the county in an amount established by resolution of the county board of supervisors as constituting the parcel's fair and appropriate contribution to the construction of the improvements. The benefit fee for a parcel shall be paid prior to the issuance of a building permit for construction of the first commercial and/or industrial uses on the parcel; provided, however, the property owner and the county may enter into a development agreement or other agreement affecting the parcel specifying the time when the benefit fee shall be paid. If a building permit is requested for a commercial and/or industrial use or for the renovation, remodeling or addition to a commercial and/or industrial parcel on a parcel for which the benefit fee required by this chapter has previously been paid, then the benefit fee pursuant to this chapter shall not be required for such a building permit. A governmental agency developing a parcel of property within the specific plan area for governmental uses shall not be required to pay a benefit fee.

(Ord. 1205 § 1 (part), 1998)

13.17.030 Benefit fee credits for developer construction of improvements.

A.

A developer shall be entitled to a credit for any benefit fee paid by that developer, if that developer constructs or funds all or a portion of the improvements. Prior to construction of the development and the portion of the improvements to be constructed by the developer, developer and county shall enter into a written agreement setting forth the terms under which the developer will construct the improvements or portions thereof. The amount of the benefit fee credit shall be the costs of the design and/or construction of the improvements constructed by developer and accepted by the county pursuant to such an agreement as determined by the director of public works.

B.

If a developer constructs portions of the improvements pursuant to the specific plan, and if the engineering and construction costs so incurred to construct those same improvements would have been more than the benefit fee assessed to that developer pursuant to [Section 13.17.020](#), then nothing in this section shall prevent the county from entering into a reimbursement agreement with that developer, subject to the availability of funds and mutually acceptable terms.

(Ord. 1205 § 1 (part), 1998)

13.17.040 Fee reduction procedures.

A.

Application for Fee Reduction. Any developer whose development is subject to the benefit fees required by this chapter may apply to the county administrative officer (CAO) for a reduction in that fee based upon the demonstrable absence of a reasonable relationship between the impact of that development on the needed improvements and either the amount of the benefit fee charged, or the type of public improvements to be constructed and/or purchased. The application shall be made in writing and filed with the county administrative officer (CAO) no later than thirty (30) days after approval of the specific development. If no application for discretionary review is required for the development, then the application shall be made in writing and filed within thirty (30) days after the county issues a building permit for the development. The application shall state in detail the factual basis for the request for reduction. Failure to file a timely application for reduction deprives the CAO to consider the application. The CAO shall make a decision on the application for reduction within thirty (30) days after the application has been filed. Notice of the CAO's decision shall be mailed to the applicant, postage paid.

B.

Appeal from CAO's Decision. Any decision of the CAO under [Section 13.17.040\(A\)](#) may be appealed to the planning commission by filing an application for appeal with the planning director. The application must be filed within fifteen (15) calendar days after notice of the CAO's decision has been mailed to the applicant; provided, however, that if the fifteen (15) days expire on a day when the county planning department is not open for business, then the appeal period shall be extended to the next business day. Failure to file a timely appeal application deprives the planning commission of jurisdiction to hear the appeal. The planning commission shall consider the appeal at a public hearing to be held within forty-five (45) calendar days after the appeal application is filed. The planning director may charge a reasonable fee to cover the cost of processing and administering the appeal.

C.

Appeal from Commission's Decision. The decision of the planning commission pursuant to [Section 13.17.040\(B\)](#) may be appealed to the county board of supervisors by filing an application for appeal with the clerk of the board. The application must be filed within fifteen (15) calendar days after the commission has made a final decision on the appeal; provided, however, that if the fifteen (15) days expire on a day when the county administrative office is not open for business, then the appeal period shall be extended to the next business day. Failure to file a timely appeal application deprives the county board of supervisors of jurisdiction to hear the appeal. The county board of supervisors shall consider the appeal at a public hearing to be held within forty-five (45) calendar days after the appeal application is filed. The decision of the county board of supervisors shall be final. The clerk of the board may charge a reasonable fee to cover the cost of processing and administering the appeal.

D.

Processing of Protests. The procedure set forth in this section shall implement Government Code Section 66020, or its successor, and shall serve as the county's method for processing protests filed pursuant to that section. Prior to the effective date of the approval of the development, or, if no discretionary approval is required, prior to the issuance of a building permit, a developer that is subject to this chapter shall sign a statement acknowledging the imposition of a public facilities development impact fee upon that developer's development. Such acknowledgment shall not be deemed a waiver of the developer's right to protest the imposition and to request a fee adjustment pursuant to this section.

(Ord. 1205 § 1 (part), 1998)

13.17.050 Use of funds.

A.

All benefit fees paid and collected pursuant to this chapter shall be placed in one or more funds and used solely for the purpose of constructing, expanding, or rehabilitating the improvements specified in the resolution establishing the benefit fee.

B.

For the fifth fiscal year following the first deposit of benefit fees into the fund, and every five years thereafter, the county shall make all of the following findings with respect to that portion of the fund remaining unexpended, whether committed or uncommitted:

1.

Identify the purpose to which the fee is to be put.

2.

Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

3.

Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in the resolution approving the benefit fee.

4.

Designate the approximate dates on which the funding referred to in Section 13.17.030 is expected to be deposited into the appropriate fund.

(Ord. 1205 § 1 (part), 1998)

13.17.060 Calculation of fees.

A developer subject to the benefit fee shall pay the amount of the fee in effect at the time that the fee becomes due. Furthermore, any fee imposed on a development which is

protected by vested rights acquired through a vesting tentative subdivision map shall pay the amount of the fee in effect at the time the rights became vested plus any adjustment for inflation made between that date and the date the fee becomes due.

(Ord. 1205 § 1 (part), 1998)