

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE ADDING CHAPTER
15.36 (DEFERRAL OF DEVELOPMENT
IMPACT FEES) TO TITLE 15 (BUILDINGS
AND CONSTRUCTION) OF THE FORT
BRAGG MUNICIPAL CODE**

ORDINANCE NO. 954-2019

WHEREAS, the City of Fort Bragg (City) imposes capacity fees as a condition of development approval for the purpose of financing improvements to address the impacts of new development; and

WHEREAS, the City calculates and collects water and wastewater capacity fees at the time of issuance of a building permit for all development projects; and

WHEREAS, the City does not issue a building permit for a development project until all fees, including water and wastewater capacity fees have been paid in full; and

WHEREAS, the City Council adopted Resolution 2462-2001 on April 9, 2001 setting water capital improvement fees and establishing a means of adjusting the fees on an annual basis to prevent the charges from falling behind the costs of improvements; and

WHEREAS, The Fort Bragg Municipal Improvement District No. 1 (District) Board adopted Resolution No. ID203-2001 on April 9, 2001 setting wastewater capital improvement fees and establishing a means of adjusting the fees on an annual basis to prevent the charges from falling behind the costs of improvements; and

WHEREAS, the City Council and District Board regularly review the water and wastewater capacity fees and adjust those fees so that the charges stay current with the costs of improvements; and

WHEREAS, the City Council and the District Board, most recently adjusted the water and wastewater capacity fees by the change in Engineering News-Record 20-City Construction Cost Index on May 13, 2019, effective August 1, 2019; and

WHEREAS, the City and the Board recognize that the payment of fees represents a substantial financial commitment for many projects; and

WHEREAS, the City Council and the District Board desire to establish a capacity fee deferral program to allow for the consideration of deferring water and wastewater capacity fees when fiscally appropriate; and

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this Ordinance.

2. Adding Chapter 15.36 to the Municipal Code provides developers an opportunity to defer payment of water and wastewater capacity fees in order to ease a financial barrier to development and to further encourage development projects within the City limits.
3. The proposed Deferral of Development Impact Fees, modifies and restructures how certain development impact fees are collected but does not change the amount, the purpose for those fees, the projects which are funded by those fees, or the establishment or approval of the fees. The fees included in the deferral program fund capital projects necessary to maintain service within the existing service areas. Therefore, the proposed modification and restructuring of the water and wastewater capacity fees, are accordingly statutorily exempt from the California Environmental Quality Act CEQA as provided in Section 15273 of the State CEQA Guidelines.

Section 2.

TITLE 15 – BUILDING AND CONSTRUCTION

Chapter 15.36 entitled **DEFERRAL OF DEVELOPMENT IMPACT FEES** is hereby added:

**CHAPTER 15.36
DEFERRAL OF DEVELOPMENT IMPACT FEES**

Section	
15.36.010	Purpose and intent
15.36.020	Definitions
15.36.030	Deferred fees
15.36.040	Fee deferral program
15.36.050	Approval of deferred fees
15.36.060	Program application
15.36.070	Interest
15.36.080	Security
15.36.090	Administrative charge
15.36.100	Expiration

15.36.010 PURPOSE AND INTENT.

The Fort Bragg City Council desires to encourage the construction of residential and nonresidential development projects within the City. The City Council finds that the existing requirements for payment of certain development impact fees for new development creates a barrier to such development by requiring developers to retain a significant amount of cash or in-kind funds to pay certain development impact fees upon issuance of a building permit. Pursuant to the foregoing, the City Council desires, by the adoption of this chapter, to ease this barrier by deferring the payment of certain development impact fees.

15.36.020 DEFINITIONS.

AFFORDABLE AND INCLUSIONARY HOUSING PROJECT. For a residential development project to be eligible for no interest from permit issuance to permit final and for deferral of

100% of developer impact fees, it must meet the Affordable and Inclusionary Housing Requirements as set forth in the Inland Land Use and Development Code Definitions Section 18.100.020.

APPLICANT. The owner or owners of record for the real property on which an approved development project is to be located.

APPROVED DEVELOPMENT PROJECT. A development project that has received final discretionary action by the City and which is in compliance with all Federal, State and local requirements, including, without limitation, environmental requirements due prior to issuance of a building permit.

DEFERRED FEES. Any development impact fees, as set forth in Section 15.36.030, that the City has agreed to defer pursuant to a fee deferral agreement. "Deferred fees" shall include any accrued interest, if applicable.

FEE DEFERRAL AGREEMENT. A standardized agreement satisfactory to the City and approved by the City Attorney, executed by and between the applicant and the City for the purpose of approving the deferral of certain deferred fees. The fee deferral agreement shall require the applicant to indemnify, defend and hold harmless the City and its officials, officers, agents and employees for any claims, causes of action or damages/cost arising from the City's deferral of the deferred fees. A fee deferral agreement is specific to an approved development project and is nontransferable to another applicant or another approved development project.

RESIDENTIAL DEVELOPMENT PROJECT. For a residential development project to be eligible for no interest from permit issuance to permit final, regardless of the total deferred impact fees, it must meet the definition of Residential Development Project as set forth in the Affordable and Inclusionary Housing Requirements section in the Inland Land Use and Development Code Definitions Section 18.100.020.

15.36.030 DEFERRED FEES.

- A. The City may defer any or all of the following development impact fees pursuant to the provisions of this chapter:
 - 1. Water Capacity Fees
 - 2. Wastewater Capacity Fees

- B. This section provides the exclusive list of fees which may be deferred pursuant to this chapter. Any fees not provided in this section shall be paid pursuant to applicable Federal, State or local regulations including, without limitation, fees related to the California Environmental Quality Act.

15.36.040 FEE DEFERRAL PROGRAM.

- A. An applicant with a qualified project may file an application with the Community Development Department to request deferral of impact fees for a project within city limits. The application shall be in a form approved by the director and shall include the following:
 - 1. Copies of all approvals and entitlements for the development of the project;

2. A preliminary title report;
 3. A copy of the tentative or final subdivision or parcel map identifying all units for which a deferral and/or waiver is sought; and
 4. Any other data and information which may be deemed necessary by the director for proper consideration of the application.
- B. Only impact fees imposed by the City may be approved for deferral. All impact fees imposed by other entities or agencies shall be paid in accordance with applicable statutes, resolutions, ordinances, and regulations. Approved impact fee deferrals for a qualified project shall not exceed 80% of the total amount of impact fees applicable to the project, except that an Affordable and Inclusionary Housing Project or a project where the Applicant is tax exempt under section 501(c)(3) of the Internal Revenue Code may defer 100% of the impact fees applicable to the project.
- C. The following financing terms are available for a qualified project and a qualified Applicant:
1. Two-Year Program – To be eligible for a two-year deferral, the total deferred fees as set forth in Section 15.36.030, must be more than \$15,000 in total, unless the project qualifies as a Residential Development Project. There shall be two equal annual installments plus interest as set forth in 15.36.070 and calculated on the unpaid balance of fees.
 2. Three-year Program - To be eligible for a three-year deferral, the total deferred fees as set forth in Section 15.36.030, must be more than \$100,000 in total. There shall be three equal annual installments plus interest as set forth in 15.36.070 and calculated on the unpaid balance of fees.

15.36.50 APPROVAL OF DEFERRED FEES.

- A. No project shall be eligible for execution of a Fee Deferral Agreement unless all of the following conditions are met:
1. The project shall be located on property within the City of Fort Bragg.
 2. The project shall have received the final discretionary approval by the City Council, Planning Commission, or staff as deemed appropriate.
 3. The project shall have undergone all required environmental review and shall be in compliance with all requirements established by the environmental document prepared for the project.
 4. All conditions of approval, as applicable at the time of permit issuance, shall have been met.
 5. All payments of taxes and assessments on the property on which the project is located shall be current.
 6. The applicant shall have no unpaid balances due to the City for the project or any other project or purpose.

7. The applicant and/or his, her, or its partners and affiliates on the project shall have been deemed by the City to present a low risk of non-payment of fees, if the City opts to conduct a risk assessment, which may include meeting the following criteria and any others the City deems necessary:
 - a. The applicant and/or his, her, or its partners and affiliates on the project have not had a foreclosure on any of its or their properties in the last four years.
 - b. The applicant and/or his, her, or its partners and affiliates on the project, and any companies in which any such person has held a controlling interest, have not filed for bankruptcy within the past four years.
 - c. The applicant and/or his, her, or its partners and affiliates on the project have no outstanding civil judgments.
8. All fees imposed by a government agency other than the City either shall have been paid or shall have been the subject of a fee deferral agreement between the applicant and the agency imposing the fees.

B. The Fee Deferral Agreement shall be approved and executed by the City Manager or designee. All such approvals shall be based on the criteria in subsection A of this section, and may be withheld if the approval criteria are not met, or if the approval criteria are met and if the approving person or body finds that it is not in the City's interest to approve a fee deferral agreement.

C. Upon execution of a Fee Deferral Agreement, the City shall record the Fee Deferral Agreement and any related security documents, if applicable, against the real property subject to the Fee Deferral Agreement in the amount of the deferred fees. Upon payment in full of the deferred fees, the City shall remove the lien from the subject property.

15.36.060 PROGRAM APPLICATION.

An application for deferral of development impact fees may be submitted concurrently with or in advance of any application for building permits for the approved development project. Notwithstanding any other provision of this code, in no event shall a building permit be issued until either of the following occurs:

- A. Payment of all applicable fees due; or
- B. Execution of a Fee Deferral Agreement.

15.36.070 INTEREST.

For all development projects for which a Fee Deferral Agreement has been approved and executed, interest shall accrue at a rate equal to the annual rate of interest earned by the City on the investment of pooled funds invested in the Local Area Investment Fund (LAIF) as calculated and published as an average monthly yield, computed on the unpaid amount from

the date of execution of the Fee Deferral Agreement or the most recent payment to the time of payment.

For Residential Development Projects for which a Fee Deferral Agreement has been approved and executed, interest shall only accrue at a rate equal to the annual rate of interest earned by the City on the investment of pooled funds, funds invested in the Local Area Investment Fund (LAIF) as calculated and published as an average monthly yield, from the date the building permit is finalized, computed on the unpaid amount from the date of execution of the Fee Deferral Agreement or the most recent payment to the time of payment.

15.36.080 SECURITY.

Execution and recordation of security instruments, in a form satisfactory to and approved by the city attorney, shall be required for all impact fee deferrals. The security instruments shall secure the total amount of deferred fees, including interest and penalties. Said security instruments shall be recorded prior to the issuance of any building permits for the qualified project and shall be secondary only to deeds of trust associated with acquisition or construction financing.

15.36.090 ADMINISTRATIVE CHARGE.

The City Council may, by resolution, establish a processing and administration fee to cover the reasonable costs of administering the fee deferral program established by this chapter. This processing and administration fee shall be placed in the general fund and shall provide a revenue source to cover the costs of preparing the fee deferral agreement and tracking the deferred fee payments.

15.36.100 EXPIRATION.

This chapter shall remain in effect until June 30, 2022, and shall thereafter be automatically repealed and of no further force and effect. The City Council may, at its sole discretion, extend the fee deferral program at any time prior to the expiration date set forth herein.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Norvell at a regular meeting of the City Council of the City of Fort Bragg held on November 12, 2019 and adopted at a regular meeting of the City of Fort Bragg held on November 25, 2019 by the following vote:

AYES: Councilmember Albin-Smith, Norvell, Peters and Mayor Lee.
NOES: None.
ABSENT: Councilmember Morsell-Haye.
ABSTAIN: None.
RECUSED: None.

William V. Lee,
Mayor

ATTEST:

June Lemos, CMC
City Clerk

PUBLISH: November 14, 2019 and December 5, 2019 (by summary).
EFFECTIVE DATE: December 25, 2019.