

**BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG AND THE FORT BRAGG  
MUNICIPAL IMPROVEMENT DISTRICT NO. 1 BOARD**

**AN ORDINANCE OF THE CITY OF FORT BRAGG AND THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1 BOARD ADDING CHAPTER 12.16 (CAPACITY CHARGES AND IMPACT FEES) TO TITLE 12 (PUBLIC IMPROVEMENTS) OF THE MUNICIPAL CODE AND REPEALING SUBDIVISIONS (B), (C), (D), (F) AND (G) OF SECTION 12.14.030 OF THE MUNICIPAL CODE AND REPLACING THE HEADING (NAME) OF SECTION 12.14.030 TO READ DRAINAGE PLANS**

**ORDINANCE NO. 987-2024**

**The City Council and the Municipal Improvement District No. 1 do ordain as follows:**

**Section 1.** The City Council and the Board make the following findings:

**A.** The City and the Municipal Improvement District own, operate, and maintain public facilities that enable the City to provide necessary and desirable public services within the City.

**B.** New residential and non-residential developments increase the demand for public services that are provided via public facilities.

**C.** A program of impact fees and capacity charges (“facility fees”) can help to ensure that developers pay a “fair share” of the capital costs associated with the public facilities that are necessitated by or serve their development projects.

**D.** Such facility fees do not fund costs attributable to existing deficiencies in public facilities, but can include the costs attributable to the increased demand for public facilities reasonably related to a development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.

**Section 2.** Chapter 12.16 (Capacity Charges and Development Impact Fees) is hereby added to Title 12 (Public Improvements) of the Fort Bragg Municipal Code, to read as follows:

## CHAPTER 12.16

### CAPACITY CHARGES AND DEVELOPMENT IMPACT FEES

#### Sections:

- 12.16.010 Purpose
- 12.16.020 Definitions
- 12.16.030 Fees Imposed
- 12.16.040 Rate
- 12.16.050 Payment
- 12.16.060 Credit for Redevelopment
- 12.16.070 Special Funds
- 12.16.080 Annual Report
- 12.16.090 Appeals
- 12.16.100 Regulations
- 12.16.110 Inflation Adjustment

#### **12.16.010 Purpose**

The purpose of this chapter is to impose fees upon development projects that fully or partially offset the costs of public facilities that are needed to serve the demand created by that development project. The amount of fees will not include the costs attributable to demand generated by existing development.

#### **12.16.020 Definitions**

“Developer” means the owner of land that is to be developed as part of a Development Project.

“Development Project” or “Project” means a development or redevelopment project that requires a building permit under this code. An Accessory Dwelling Unit subject to the requirements of Section 65852.2 of the California Government Code, is not itself a Project for purposes of this definition, and if a Project includes an Accessory Dwelling Unit, that Accessory Dwelling unit shall not be treated as being part of the Project for purposes of this Chapter.

“Fee” means a fee imposed pursuant to Section 12.16.030 of this chapter.

### **12.16.030 Fees Imposed**

Except as otherwise provided in this chapter, the following Fees are hereby imposed upon the Developer of each Development Project in the City as a condition of development:

Water Facilities Fee

Sewer Facilities Fee

Storm Drainage Facilities Fee

Police Facilities Fee

Fire Facilities Fee

### **12.16.040 Rate**

The rate of each Fee shall be set by the City Council by ordinance or resolution.

### **12.16.050 Payment**

A. Except as otherwise provided in this section, the Fees required by this article shall be paid prior to the issuance of a building permit for the Development Project. The City shall not issue a building permit for a Development Project unless the Fees have been paid. If a Development Project does not require a building permit, the Fees required by this article shall be paid prior to the earliest of (i) submission of an application for utility service, (ii) issuance of a certificate of occupancy, (iii) issuance of a final inspection certificate and/or (iv) the date of first use of the Development Project (and the City shall not commence new utility service, issue a certificate of occupancy, issue a final inspection certificate, or issue a business license for the occupant of the Development Project until the Fees have been paid).

B. The Fees for a Development Project shall be calculated at the rates in effect as of the date the Developer submits a complete and adequate application for a building permit for the Development Project, or, if there is no building permit, the date on which the fees are paid.

C. Notwithstanding the requirements of subdivision (A) of this section, the City will, upon request of a Developer, enter into a contract with the Developer for the delayed collection of all or part of the Fees for a Development Project. All fees collected on a delayed basis in connection with a building permit shall be due on a lump-sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first. The City shall require that the contract meet the requirements of Section 66007(c) of the California Government Code and shall include such other provisions as are useful or necessary to the contract in the judgment of the City Manager. Except with respect to a Fee described in subdivision (ii)(b) of this subdivision (C), the City shall require the posting of a performance bond or a letter of

credit from a federally insured, recognized depository institution to guarantee payment of any fees or charges. The provisions of this subdivision C apply only if all of the following are true:

(i) the Development Project is a residential development; and

(ii) either (a) the Fee or portion of Fee for which delayed collection is requested is collected solely in connection with an affordable housing unit described in Section 66007(b)(2)(A) of the California Government Code or (b) the Fee or portion of Fee for which delayed collection is requested is not a fee described in Section 66007(b)(1) of the California Government Code.

#### **12.16.060 Credit For Redevelopment**

Where the Development Project involves the demolition of an existing structure and its replacement with a new structure, the Developer shall be entitled to credits against the Fees required by this chapter. A credit shall not be applied for any building or part of a building unless the Developer can establish, to the satisfaction of the City, that the building or part of the building was either occupied by a resident (for a residential building) or occupied by a business that conducted actual business activities (for a non-residential building) during six of the forty-eight months prior to the date on which a complete and adequate building permit application for the Development is submitted. A credit shall be calculated separately for each of the six (6) Fees imposed pursuant to section 12.16.030 of this chapter. Each credit shall be equal to the Fee that would be charged for the development of the structure to be demolished, calculated at the rate in effect on the date the Developer submits a complete and adequate application for his or her new building permit. In no event shall the amount of the credit reduce any Fee for the Development Project below \$0, and a credit may not be transferred to any other Development Project in the City, applied to any of the six (6) Fees other than the Fee for which it was calculated or used for any purpose other than offsetting Fees imposed pursuant to this chapter. For example, a credit calculated based on the rate for the Fire Facilities Fee may not be applied to any Fee other than the Fire Facilities Fee.

#### **12.16.070 Special Funds**

A. The following accounts or funds shall be established:

Water Facilities Fee Fund

Sewer Facilities Fee Fund

Storm Drainage Facilities Fee Fund

Police Facilities Fee Fund

Fire Facilities Fee Fund

B. When the City receives payment of a Fee pursuant to this chapter, that payment shall be deposited in the appropriate account or fund established pursuant to this Section in a manner that avoids any commingling of the Fees with other revenues and funds of the City, except for temporary investments.

C. Any interest income earned by moneys in an account or fund established pursuant to this Section shall also be deposited in that account or fund.

D. Moneys in the Water Facilities Fee Fund shall be expended by the City only for water facilities and improvements.

E. Moneys in the Sewer Facilities Fee Fund shall be expended by the City only for wastewater facilities and improvements.

F. Moneys in the Storm Drainage Facilities Fee Fund shall be expended by the City only for storm drainage facilities and improvements.

G. Moneys in the Police Facilities Fee Fund shall be expended by the City only for police vehicles, police equipment, and police facilities and improvements.

H. Moneys in the Fire Facilities Fee Fund shall be expended by the City only for fire facilities and improvements.

#### **12.16.080 Annual Report**

A. For each separate account or fund established pursuant to Section 12.16.070 of this chapter, the City shall, within 180 days after the last day of each fiscal year, make available to the public the information required by Section 66006(b)(1) of the California Government Code. The information may be included in the City's Consolidated Annual Financial Report or any other report prepared by the City, and need not be isolated in a separate document.

B. The City Council shall review the information made available to the public pursuant to paragraph (A) of this Section at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public.

C. Notice of the time and place of the meeting where the City Council will review the information, including the address where the information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the City Clerk for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year.

D. For the fifth fiscal year following the first deposit into the accounts or funds established pursuant to Section 12.16.070 of this chapter, and every five years thereafter, the City Council shall, in connection with its review conducted pursuant to

paragraph C of this section, make each of the findings required by Section 66001(d) of the California Government Code.

#### **12.16.090 Appeals**

A. If a Developer believes that one or more of the Fees applied to his or her Project have been calculated incorrectly by the City, he or she may apply to the City Manager for an adjustment to those Fees.

B. Any such appeal must be made in writing, and must include a proposed revised Fee amount and an explanation of why the proposed revision constitutes a correct application of the terms of this Chapter and of any resolutions or other actions of the City Council that set the rate of the Fees or that otherwise affect the Fees.

C. The written appeal must be filed no later than the later of (i) ten days after the date on which the Fee becomes due or (ii) ten days after the date on which the Fee is paid. An appeal may be filed prior to payment of a Fee; however, full payment of the Fee, as calculated by the City shall remain a precondition to issuance of a certificate of occupancy or the conduct of a final inspection (as applicable) unless and until the City Manager makes a determination that revises the amount of the Fees.

D. The City Manager shall have thirty days to respond to the appeal after it has been filed, either by determining that the original calculated amount was correct or by determining that a revised amount should be due. The determination of the City Manager is the final determination of the City. If the City Manager does not respond to the appeal within the thirty-day period, the appeal shall be deemed finally rejected.

E. If the City Manager determines that the correct Fee is less than the amount already paid to the City, the City will refund to the Developer the amount of the overpayment.

F. The appeals process set forth in this Section applies solely to the case where the Developer believes that the City has incorrectly applied the Fees according to the City's ordinances, resolutions, City Council Actions, and regulations. It does not apply to any claim that any such approved ordinances, resolutions, actions or regulations exceed the authority of the City or violate state or federal law. This Section does not excuse the Developer from compliance with Chapter 9 of Division 1 of Title 7 of the California Government Code (beginning with Section 66020) with respect to any matter subject to that chapter of the Government Code.

#### **12.16.100 Regulations**

The City Manager may promulgate such interpretive regulations for the application of this Chapter as he or she finds necessary or useful.

#### **12.16.110 Inflation Adjustment**

The rate of each fee may be periodically adjusted to reflect the change in the Construction Cost Index published by the Engineer News Record (or any successor to such index). However, any such adjustment shall take effect only if approved by the City Council, by resolution, and shall take effect no earlier than sixty days following such approval.

**Section 3.** To clarify the relationship between the Fees imposed by this ordinance and the City's existing fees:

- A. The Water Facilities Fee established by this ordinance is the successor to the City's existing Water Capacity Charge.
- B. The Sewer Facilities Fee established by this ordinance is the successor to the City's Sewer Capacity Charge and shall serve as the capacity charge referenced by Section 14.24.060(B) of the Municipal Code.
- C. The Storm Drainage Facilities Fee is the successor to the City's Drainage Fee that would otherwise be required by Section 12.14.030 of the Municipal Code and shall be applied as set forth in this ordinance.
- D. This ordinance supersedes all prior resolutions and ordinances setting the rates of any of the fees (collectively, the "Succeeded Fees") that are succeeded pursuant to Subdivisions (A), (B), and (C) of this Section. The intent of this Section is that each of the Succeeded Fees shall remain in effect and operative, at their existing rates, until the rates established by Section 5 of this ordinance become effective for their successors.
- E. The intent of this ordinance is that proceeds of the Succeeded Fees that have not yet been expended shall be placed in the funds provided for in the new Section 12.16.070 and such moneys shall be used for the type of facilities for which the fees were charged.
- F. The City Council adopts all information in the Impact Fee Nexus Study approved by Resolution No. 4763-2024 & Resolution No. ID 486-2024, which is incorporated herein by reference and available for public inspection in the Office of the City Clerk, about the amount of the prior fees and assumptions underlying them and determines that their ongoing use is appropriate.
- G. Subdivisions (B), (C), (D), (F), and (G) of Section 12.14.030 of the Municipal Code are hereby repealed and the heading (name) of Section 12.14.030 of the Municipal Code is amended to read "Drainage Plans." The Storm Drainage Facilities Fee is intended to permit the implementation of the City's Storm Drainage Master Plan.

- H. The City Council would not have superseded any Succeeded Fee or amended any code sections relating to that Succeeded Fee if the successor to that Succeeded Fee, as established by this ordinance, were not effective. Therefore, in the event a fee established by this ordinance to replace (or increase the rate of) a Succeeded Fee is invalidated by any court, it is the intent of the City Council that the Succeeded Fees continue as if not superseded.

**Section 4.** For administrative convenience, this ordinance refers to all fees (both capacity charges and development impact fees) established by this ordinance as “facility fees.” The use of this uniform description should not be interpreted to mean that any fee imposed by this ordinance that is a “capacity charge” (as that term is defined in Government Code Section 66013) is subject to legal requirements that do not normally apply to such capacity charges.

**Section 5.** The fees established by the new Section 12.16.030 of the Municipal Code, as added by this ordinance, are hereby set at the rates set forth in Exhibit “A” to this ordinance.

**Section 6.** The City Council finds that the purpose of each fee established by this ordinance and the use to which each fee is to be put are as set forth in this ordinance and the Impact Fee Nexus Study previously approved by this Council, which Impact Fee Nexus Study is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference. The City Council determines that, for the reasons set forth in the Impact Fee Nexus Study and as demonstrated by the Impact Fee Nexus Study, there is a reasonable relationship between each fee's use and the type of development project on which each fee is imposed. The City Council further determines that, for the reasons outlined in the Impact Fee Nexus Study and as demonstrated by the Impact Fee Nexus Study, there is a reasonable relationship between the need for the public facilities and the type of development project for which each fee is imposed.

**Section 7.** Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act (CEQA) because the adoption of this Ordinance is not a project, in that it is a government funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures per CEQA Guidelines Section 15061(b)(3)).

**Section 8.** Except as specifically provided in Section 3, if any section, subsection, sentence, clause, or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. Except as specifically provided in Section 3, the City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause, or phrase thereof,

irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 9.** The City Clerk shall publish this ordinance in accordance with applicable law.

**Section 10.** Effective date. This ordinance shall take effect sixty (60) days from the date of its passage.

The foregoing Ordinance was introduced at a regular meeting of the City Council on February 12, 2024, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg/District Board of the Fort Bragg Municipal Improvement District No. 1 held on the 11<sup>th</sup> day of March 2024, by the following vote:

**AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:**

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**BERNIE NORVELL  
Mayor/Chairperson**

**ATTEST:**

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**Diana Sanchez  
City Clerk/Secretary**

**PUBLISH:** February 22, 2024 and March 21, 2024 (by summary).  
**EFFECTIVE DATE:** May 10, 2024.