COUNTY OF SAN LUIS OBISPO

PUBLIC FACILITIES FEES ORDINANCE

TITLE 18 OF THE SAN LUIS OBISPO COUNTY CODE

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ADOPTED BY
THE SAN LUIS OBISPO COUNTY BOARD OF SUPERVISORS
August 20, 1991 - Ordinance No. 2519

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COUNTY OF SAN LUIS OBISPO

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COUNTY OF SAN LUIS OBISPO

PUBLIC FACILITIES FEES

Adopted August 20, 1991, Ordinance 2519

Amended

October 15, 1991	Ord. 2527
February 16, 1993	Ord. 2598
July 27, 1993	Ord. 2628
April 12, 1994	Ord. 2673
May 17, 1994	Ord. 2679
November 21, 1995	Ord. 2737
February 2, 1999	Ord. 2853
April 25, 2006	Ord 3085

CHAPTER 1: PURPOSE

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18.01.010 - Purpose, Findings and Declaration of Intent:

a. In order to implement the goals and objectives of the County General Plan and to mitigate impacts caused by new development projects within the County, Public Facilities Fees are necessary. The fees are needed to finance Public Facilities and to assure that new development projects pay their fair share for these facilities.

b. Title 7, Chapter 5, section 66000 et seq. of the California Government Code provides that Public Facilities Fees may be enacted and imposed on development projects. The Board of Supervisors finds and determines that:

(1) New development projects cause the need for construction, expansion or improvement of Public Facilities within the County of San Luis Obispo.

(2) Funds for construction, expansion or improvement of Public Facilities are not available to accommodate the needs caused by development projects; which will result in inadequate Public Facilities within San Luis Obispo County.

c. The Board of Supervisors finds that the public health, safety, peace, morals, convenience, comfort, prosperity and general welfare will be promoted by the adoption of Public Facilities Fees for the construction, expansion or improvement of Public Facilities, the need for which is caused by new development projects. In establishing Public Facilities Fees, the Board of Supervisors finds the fees to be consistent with the County General Plan/Land Use Ordinance and, pursuant to Government Code section 65913.2, has considered the effects of the fees with respect to the County's housing needs as established in the Housing Element of the said General Plan/Land Use Ordinance.

d. Pursuant to Title 14 Code of Regulations sections 15061 and 15273(4), the Board of Supervisors finds that this ordinance is exempt from the California Environmental Quality Act.

18.01.020 - Public Facilities Fees

Public Facilities Fees are hereby established. Said fees are to be imposed as a condition of permits for, or the approval of, new development projects within the County.

18.01.030 - Authority for Adoption

This Title is adopted under the authority of Title 7, Division 1, Chapter 5 of the California Government Code (sections 66000 et seq.) and Title 5, Division 2, Part 1, Chapter 13.7 of the California Government Code (sections 54999 et seq.).

CHAPTER 2: DEFINITIONS

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18.02.010 - Definitions

Words when used in this Title, and in resolutions adopted under the authority of this Title, shall have the following meanings:

a. "Development Project" means any project undertaken for the purpose of development. "Development Project" includes, but is not limited to the following:

(1) Land divisions pursuant to Title 21 of this code, including lot line adjustments, certificates of compliance, parcel maps, tract maps and condominium conversions;

(2) Any project requiring an approval pursuant to Title 22 of this code, including approvals of development plans, site plans, minor use permits, and variances, but excepting approvals of County General Plan/Land Use Ordinance amendments;

(3) Any project requiring the approval of any application filed pursuant to the County Coastal Zone Land Use Ordinance, Title 23, and portions of Title 8 and Title 19 of this code, including the approval of coastal development permits, development plans, site plans, minor use permits, and variances, but excepting Local Coastal Plan/Coastal Zone Land Use Ordinance amendments;

(4) Any project which requires the issuance of any building permit; and

(5) Any other real property development, which is subject to the jurisdiction of the County and which requires an approval that is subject to the exercise of the discretion of the Board of Supervisors, the County Planning Commission, the Planning Director of the County, or the Chief Building Official of the County.

b. "Fee" means a monetary exaction, other than a tax or special assessment, which is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of Public Facilities related to the development project. "Fee" means the Public Facilities Fee established by this title.

c. "County" means the County of San Luis Obispo, a general law County organized and existing under the Constitution and law of the State of California.

d. "Public Facilities" includes public improvements, public services and community amenities including:

(1) Public buildings and related facilities.

(2) Facilities for the storage, treatment, and distribution of nonagricultural water.

(3) Facilities for the collection, treatment, reclamation, and disposal of sewage.

(4) Facilities for the collection and disposal of storm waters and for flood control purposes.

(5) Facilities for the generation of electricity and the distribution of gas and electricity.

(6) Transportation and transit facilities, including but not limited to streets and supporting improvements, roads, overpasses, bridges, harbors, ports, airports, and related facilities.

(7) Parks and recreation facilities.

(8) Any other capital project identified in the capital facilities plan.

"Public Facilities" as used in this Title shall not include any public road facilities or improvements that are the subject of Chapter 13.01 of Title 13 of the San Luis Obispo County Code (Road Improvement Fee) and for which the applicant for the approval of a development project has paid or is obligated to pay a Road Improvement Fee.

e. "Board of Supervisors" means the Board of Supervisors of the County.

CHAPTER 3: IMPOSING PUBLIC FACILITIES FEES

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18.03.010 - Imposing Public Facilities Fees

The imposition of Public Facilities Fees shall be accomplished, from time to time, by resolution of the Board of Supervisors after a noticed public hearing. Such fees, when imposed, shall be a condition of the issuance of permits for, or the approval of, development projects.

In adopting each such resolution the Board of Supervisors shall:

(1) Identify the purpose of the fee;

(2) Identify the use to which the fee is to be put;

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;

(4) Determine that there is a reasonable relationship between the need for the Public Facilities and the impacts caused by the type of development project on which the fee is imposed; and

(5) Determine that there is a reasonable relationship between the amount of the fees and the cost of the Public Facilities, or portion of the Public Facilities, attributable to the development projects on which the fees are imposed.

(6) Establish, as a part of each such resolution, a schedule of fees.

18.03.020 - Exemptions.

Imposition of Public Facilities Fees shall be as specified in Section 18.03.010, except the following types of development projects shall be exempt from such fees:

a. Remodels, additions, or alterations to existing residences, except to the extent that additional units are created. If any additional residence is created by the addition or remodel project, then the facilities fees shall apply. In addition, when the remodel, addition or alteration will result in additional square footage for residential purposes, the project will be required to pay the fire

component of the public facility fee for the additional square footage. The decision as to what constitutes an addition or remodel shall be made by the Planning Director.
[Amended 2006, Ord. 3085]

b. The alteration of a specific non-residential structure that existed or had an issued building permit prior to the effective date of the facilities fees, December 16, 1991, unless the alteration changes the use of the structure to a different type of development category for purposes of calculating the facilities fee, or unless the square footage of the building is increased. Where the project is determined to require the payment of the fees, the fee shall be imposed on the total square footage requiring the payment of the facility fee.

c. Residential accessory structures, including garages, carports and other residential accessory structures as defined in Title 22, Land use Ordinance and Title 23, Coastal Zone Land Use Ordinance.

d. An agricultural building that is designed and constructed to house farm implements, hay, grain, poultry, or livestock; or that is not a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged; or is not a place used for public assembly when accessory to a farm residential structure housing the farm operator.

e. Buildings whose primary use is for non-profit civic or religious and public assembly purposes, such as churches, non-profit civic and fraternal organizations, service clubs, and buildings constructed by a public agency other than the county where there is no entry fee required for attendance at the events occurring in the building. Except that projects developed by public and private utility companies are subject to the payment of public facilities fee in accordance with this Title. [Amended 1995, Ord. 2737]

f. The reconstruction of any development project that is damaged or destroyed as a result of fire, explosion, or act of God. Any reconstruction of real property, or portion thereof, which is not substantially equivalent to the damaged or destroyed property, shall be deemed to be new construction and only that portion which exceeds substantially equivalent construction may be assessed a fee. The term substantially equivalent, as used in this section, shall have the same meaning as the term in subdivision © of section 70 of the Revenue and Taxation Code.

[Amended 1993, Ord. 2598]

g. Moved buildings shall be subject to the following:

(1) When the donor site for the building proposed to be moved is located in the unincorporated county, the donor site shall be given a credit for the building that is to be moved off the site. The credit amount shall be equal to the amount of the public facilities fees specified in the current facilities fees ordinance as adopted by the Board of Supervisors for the particular type of building at the time of issuance of a moved building permit. The credit amount shall run with the donor site and shall remain in effect until such future date as a building permit is applied for on the donor site. The credit amount shall then be

applied towards the payment of any public facilities fees that may be due and payable at the time of issuance of the building permit for the new structure on the donor site.

(2) When the receiver for a moved building is located in the unincorporated county, the receiver site shall be charged the required public facilities fees in accordance with the current facilities fees ordinance as adopted by the Board of Supervisors for the type of building that is being moved onto the receiver site. The required fees shall be collected prior to the issuance of the building permit to establish the moved building on the receiver site.

[Amended 1994, Ord. 2679]

h. Development projects to be constructed on any county-owned property or at any county-owned facility, where projects are developed by a private developer pursuant to a contract with the county where all of the following criteria are met:

(1) the development project will result in a public facility which is consistent with an adopted master plan for the property or facility; and

(2) the development project will result in public facilities which will be constructed on county-owned land by a developer under contract with the county to construct the facilities; and

(3) If any use of the public facilities is granted to the developer by the contract, that the contract shall also provide that, at the conclusion of the specified period of use of the public facilities by the developer, any and all rights of the developer in and to the public facilities shall cease and the public facilities shall become the sole property of the County of San Luis Obispo.

[Amended 1994, Ord. 2673; 1995, Ord. 2737]

i. Development projects for which a land use or construction permit is being sought in order to remedy an identified, land use violation, where the applicant can provide documentation to the satisfaction of the planning director that the following criteria can be met:

(1) The use for which the development permit is being sought must have been established prior to the adoption of this title;

(2) the use for which the development permit is now being sought was a permittable use at the time it was illegally established; and

(3) The property owner seeking the development permit to remedy the land use violation is subsequent owner of the property that is in violation and acquired the property prior to February 2, 1999, not the original owner that illegally established the use.

[Amended 1993, Ord. 2598; 1993, Ord 2627; 1994, Ord 2673; 1994, Ord. 2679; 1995, Ord. 2737; 1999, Ord. 2853]

CHAPTER 4: FEE PAYMENT

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18.04.010 - Fee Payment:

a. Prior to the issuance of any building permit, or prior to the granting of any earlier approval for any development project if the collection of the fees at such earlier time is permitted by law, the applicant for the permit or approval shall pay to the County Department of Planning and Building any and all Public Facilities Fees imposed by resolution of the Board of Supervisors. Permits for remodels, additions, or alterations to existing residences that will add additional square footage for residential purposes will be required to pay the fire component of the Public Facilities Fee for the additional square footage. Payment of the fees for affordable housing projects shall be deferred as follows: [Amended 2006, Ord. 3085]

(1) The payment of public facilities fees that are assessed to a residential project that is to be developed as a very low- and low-income (less than or equal to 80% of median income) affordable housing project under the terms specified in Title 22 or Title 23 of the County Code (Land Use Ordinance and Coastal Zone Land Use Ordinance, respectively) shall be deferred to such time in the future as there are funds available for payment of those fees from the Affordable Housing In-Lieu Fee Fund as established by Ordinance No. 2527. [Amended 1993, Ord. 2628; 1995, Ord. 2737]

b. The amount of the fees shall be determined by the schedule of fees in effect on the date the vesting tentative map or vesting parcel map for a development project is approved, or, if there is no such vesting map, on the date a permit is issued or an approval is granted for a development project.

c. When application is made for a new building permit following the expiration of a previously issued building permit for a development project for which fees were paid, another fee payment shall not be required, unless the schedule of fees has been amended during the interim, and, in this event, the appropriate increase or decrease in the fees shall be applied.

d. In the event that subsequent development occurs with respect to a development project for which fees have been paid, additional fees shall be required and paid but only for such additional square footage of the development project that was not included in computing the prior fee.

e. When fees are paid for a development project and that development project is subsequently reduced so that it becomes entitled to a lower fee, the County shall issue a partial refund of the fees so paid.

f. When fees are paid for a development project and the development project is subsequently abandoned without any further action beyond the obtaining of a permit or an approval, the payor shall be entitled to a refund of the fees paid, less a portion of the fees sufficient to cover the costs of collection, accounting for and administration of the fees so paid.

g. When application is made for a new building permit where the Parkland fees (Quimby) have been paid at the time of recordation of the subdivision, the land portion of the park component of the Public Facility Fee shall not be collected at the time of the building permit. The development portion of the park component of the Public Facility Fee shall be collected.
[Amended 2006, Ord. 3085]

18.04.020 - Public Facilities Fees Accounts

a. Upon receipt of a fee subject to this Title, the County shall deposit, invest, account for and expend the fees pursuant to California Government Code section 66006.

b. Public Facilities Fees paid shall be held by the County Auditor-Controller in separate Public Facilities Fees accounts to be expended for the purpose for which they were collected. The Auditor-Controller shall retain any interest earned on the fees in such accounts and shall allocate the interest to the accounts for which the original fees were imposed.

CHAPTER 5: CONDITIONS FOR REFUND

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18.05.010 - Conditions for Refund

a. The County Auditor-Controller shall report to the Board of Supervisors once each fiscal year any portion of a fee remaining unexpended or uncommitted in an account five (5) or more years after deposit and identify the purpose for which the fee was collected. The Board of Supervisors shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

b. The County shall refund to the then current record owner or owners of lots or units of the development project(s) on a prorated basis the unexpended or uncommitted portion of the fees, and any interest accrued thereon, for which need cannot be demonstrated.

c. If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this section exceed the amount to be refunded, the Board of Supervisors, after a public hearing, for which notice has been published pursuant to Government Code section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fees are collected subject to this Title that serve the project on which the fee was originally imposed.

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[Amended 1993, Ord. 2598]

18.06.010 - Construction

With respect to Public Facility Fees imposed by resolution under this Title, any provision of such Public Facility Fees which is in conflict with this Title shall be void.

18.06.020 - Severability Clause

Should any provision of this Title or a subsequent amendment thereto be held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Title shall remain in full force and effect.

18.06.030 - Appeal

A person applying for the approval of any development project subject to Public Facilities Fees may file an appeal to the Board of Supervisors for reduction or adjustment to the fees, or a waiver of the fees, as follows:

a. **Timing and Form of Appeal.** An appeal shall be made in writing on the form provided by the Planning Department and may be accompanied by any other supporting materials the appellant may wish to furnish explaining the reasons for the appeal. The appeal shall be filed with the Planning Department not later than: (a) within 14 days of the hearing granting approval of the development project subject to Public Facilities Fees; or (b) if no public hearing for the development permit is required, at the time of the filing of the application for the development permit. The Planning Director shall process the appeal pursuant to this section, including scheduling the matter before the Board of Supervisors for a public hearing.

b. **Basis for the Appeal.** The appeal for reduction or adjustment to the fees, or waiver of the fees, shall be based upon the absence of any reasonable relationship or nexus between the impacts of the development project and either the amount of the fee charged or the type of public facilities to be financed.

c. **Report and Hearing.** When an appeal has been filed, the Planning Director will prepare a staff report and recommendation for consideration by the Board of Supervisors within 60 days of the filing of the appeal.

d. **Action and Findings.** After holding a public hearing, the Board of Supervisors may affirm, affirm in part, or deny the appeal, based upon findings of fact regarding the particular case. Such findings shall identify the reasons for the action on the appeal. The decision on the appeal by the Board of Supervisors shall be final.

e. **Withdrawal of Appeal.** After an appeal has been filed pursuant to this section, the appeal shall not be withdrawn except with the consent of the Board of Supervisors.

f. **Modification of the Development Project After Granting of an Appeal.** If a reduction, adjustment or waiver of the Public Facilities Fees is granted, any change of the development project, or any change in use within the development project, shall invalidate the waiver, adjustment or reduction of the fees and the originally imposed fees shall be due and payable to the County.

[Amended 1993, Ord. 2598]

18.06.040 - Fee Protest, Residential Housing

Any other provision of this ordinance to the contrary notwithstanding, any protest of the imposition of a fee or fees on a residential housing development project shall be made according to the provisions of Section 66020 of the California Government Code.

CHAPTER 7: AFFORDABLE HOUSING IN-LIEU FEES

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18.07.010 - Findings

The board of supervisors of the county finds and declares as follows:

a. San Luis Obispo County has adopted policies and programs designed to foster an increase in the amount of affordable housing in the unincorporated area of the county. Among these policies and programs are:

(1) The county has adopted the provisions of Chapter 4 of the county housing element of the county's general plan.

(2) The county has exempted low and moderate income households from the county's growth management ordinance.

(3) The county provides Federal Section 8 rental assistance to very low income households by means of contracts with the housing authority of the city of San Luis Obispo.

(4) The county obtains funds for rehabilitating existing housing and for long-term financing of housing for low income households by means of competitive applications to the Community Development Block Grant Program.

(5) The county obtains funds needed by low income households to facilitate conversion of mobilehome parks to resident ownership through county participation in the state Mobilehome Park Resident Ownership Program.

(6) The county also promotes affordable rental housing by allowing mixtures of commercial and residential development in the same development project.

(7) Government Code Section 65915 requires a twenty-five percent density bonus plus additional incentives of financial value for housing developments with twenty percent low income units, ten percent for very low income, or fifty percent for senior citizens. The county offers a thirty-five percent density bonus for housing developments providing ten percent of their units for very low income, twenty percent for low income, thirty percent for moderate income, or fifty percent for senior citizens' households.

(8) In the coastal zone, for housing developments of eleven or more units, the county requires fifteen percent of the units to be affordable and reserved for moderate income households.

(9) Secondary dwellings are permitted in areas where they can be supported by community resources and facilities.

(10) Sufficient land is designated (zoned) residential single-family and residential multi-family to meet the county share of regional housing needs shown in the regional housing needs plan.

b. The effect of the foregoing programs and policies has been that in recent years affordable housing has comprised approximately three and one-half percent of the new residential development projects in the county.

c. The recent establishment by the county of development impact fees on new residential development projects will increase the cost of producing all residential development projects, including those projects with affordable housing; and the effect of increasing the cost of producing affordable housing would be to make such housing less affordable. In order to not impair the effects of current county programs and policies that encourage the production of affordable housing, the board of supervisors further finds that affordable housing should be protected from the effects of said development impact fees to the extent made possible by this chapter.

d. The county has commissioned a study which documents a program designed to prevent the development impact fees from undermining the county's affordable housing policies and programs and which study quantifies the relationships between the growth in residential development projects in the unincorporated area of the county and the estimated production of affordable housing. The said study is entitled: "Affordable Housing Mitigation." The board of supervisors has reviewed the said study and has concluded that future residential development in the unincorporated area of the county will continue to exacerbate the shortage in affordable housing as set forth above. The said study is incorporated in this chapter by reference.

e. Accordingly, it is appropriate to implement an "in-lieu" fee program so that residential developers will not have an incentive to not include affordable housing in their development projects. [Ord. 2527 §1, 1991].

18.07.020 - Definitions

Words used in this chapter shall have the following meanings:

a. "Affordable housing" means a residential dwelling unit as described in Section 22.04.090 and Section 23.04.090 of the land use ordinance and coastal zone land use ordinance, Titles 22 and 23 of this code, respectively. Furthermore, affordable units must continue to remain available upon resale or re-lease by complying with these definitions for thirty years following their construction as specified in Titles 22 and 23.

b. "Board of supervisors" means the board of supervisors of the county.

c. "County" means the county of San Luis Obispo, a general law county organized and existing under the Constitution and law of the state of California.

d. "County median income" means the median family income of the county as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

e. "Public facilities fees" means any fee imposed under or pursuant to:

(1) County Ordinance No. 2379--Road Improvement Fee; and/or

(2) County Ordinance No. 2519--Public Facilities Fees (Title 18 of this code).

f. "Residential development project" means residential land divisions pursuant to Title 21 of this code, including parcel maps, tract maps and condominium conversions. [Ord. 2738 §2, 1995; Ord. 2527 §2, 1991].

18.07.030 - Affordable Housing In-Lieu Fee

An affordable housing in-lieu fee is hereby established. Said fee is to be imposed as a condition of the approval of any new residential development project within the unincorporated area of the county.

a. Amount of Fee. The affordable housing in-lieu fee for a residential development project shall be three and one-half percent of the public facilities fees imposed on that residential development project except that no affordable housing in-lieu fee shall be imposed on that portion of a residential development project attributable to any affordable housing included within the residential development project.

b. Time of Imposition and Payment of Fee. The amount of the affordable housing in-lieu fee for any new residential development project within the unincorporated area of the county shall be determined for, and shall be imposed upon, such new residential development project at the time of the approval of an application for a new residential development project, and payment of the fee shall be a condition of the approval of said new residential development project and be paid prior to recording the final map or parcel map for the said residential development project.

c. Fee Account. An account or fund shall be established which shall receive all affordable housing in-lieu fees paid to the county. This fund may receive moneys from other sources.

d. Use of the Fee. Moneys deposited in the fund shall be used, to the extent that moneys are available in the fund, to pay that part of public facilities fees imposed on any residential development project that is attributable to affordable housing within the project. Moneys in the fund may also be used to cover reasonable administrative expenses.

e. Administration. The fund shall be administered by the director of planning and building of the county who shall have the authority to govern the fund consistent with this chapter, and to prescribe procedures for said purpose, subject to the approval of the board of supervisors.

f. Fee Review. Commencing one year after the effective date of the ordinance codified in this chapter, and annually thereafter, the director of planning and building of the county shall report to the board of supervisors on the status of activities undertaken with the fund. The report shall include a statement of income, expenses, disbursements, and other uses of the fund. The report shall evaluate the relationship between the amount of affordable housing in-lieu fees paid under this chapter and the amount of moneys paid from the fund and recommend adjustments to the affordable housing in-lieu fee to ensure that the objectives of this chapter are met. [Ord. 2737 §3, 1995; Ord. 2527 §3, 1991].