

ARTICLE X. PUBLIC FACILITIES FEES

Sec. 11-130. Findings

(a) Beginning in January 1990, the Board of Supervisors and county staff have continued to express concern that new residential, commercial and industrial development in the county was placing increasing demands on a variety of county facilities. This concern was evidenced by Resolution 90-16 of the Solano County Board of Supervisors, which was jointly adopted by all of the cities in the County.

(b) To this point, new development has not borne its fair share of the cost for additional County public facilities.

(c) Resolution No. 90-16 led to the hiring by the County of Recht Hausrath & Associates to identify the needs for new public facilities caused by additional residential, commercial and industrial development in the county, and to advise the county on appropriate means of recovering those costs. A study made available to the public, dated August 2, 1991, entitled SOLANO COUNTY "THE COST OF GROWTH" (the Initial Report) by Recht Hausrath & Associates, incorporated herein by reference as Exhibit "A", identified a number of categories of facilities for which new development triggers additional public facility needs. Background technical information and raw data sources were also provided for public review.

(d) The Initial Report estimates public facilities needs based on population growth. The population growth estimates and the resulting estimated public facilities needs are reasonable and consistent with the Board of Supervisor's knowledge of and experience in county affairs.

(e) County public facilities needs have grown with population in the past, and will continue to grow at least as fast as the population. New residents and employees are likely to require the same services as the county now provides to existing residents and employees. In fact, the public facilities needs projected by the Initial Report are conservative, since they are based on providing the existing level of services to an expanding population, while the county's goal is to provide many services at a higher level in the future.

(f) The Initial Report fairly allocates the fee, in general, equally within the different cities in the county, and fairly allocates additional costs to unincorporated areas for the same county-wide public facilities and services furnished in those areas.

(g) The Initial Report fairly identifies services which are affected primarily by residential development, such as juvenile justice. It fairly allocates between residential, commercial and industrial development the costs of providing new public facilities needed as a result of residential, commercial and industrial development.

(h) The amount of the fees to be charged shall be adopted by the Board of Supervisors by this Ordinance, based upon the results and consideration of the AB1600

Final Report, entitled "Solano County, The Cost of Growth", Phase Two, (The Final Report) incorporated herein by reference, as Exhibit "B". The Final Report specifically identifies the purpose of the fees, identifies the uses to which the fees may be put and for what groups of public facilities the fees may be expended. The Final Report sets forth findings as to the reasonable relationship between the fee and the type of development projects for which the fee will be imposed, and also sets forth findings as to the reasonable relationship between the needs for public facilities and the type of development project on which the fee will be imposed.

(i) The Final Report fairly reflects the public facilities needs which are generated by new residents and employees, respectively, from development. The Initial Report reasonably applied residential densities and employment densities for different land uses in calculating the fee. The fees specified fairly represent the variations in resident and employee demand for services. The variation of the fee between residential, commercial and industrial is reasonable, and is not large enough to make the fee unreasonable for particular projects within each category.

(j) The costs estimated for constructing public facilities are reasonable in light of the Board's experience with planning, design and construction of county public facilities, and the conservative assumptions of the Initial Report on such points as financing, inflation and building standards. Higher costs are appropriately assigned to certain public facilities, such as criminal justice facilities, including jails.

(k) This ordinance properly limits use of all fees collected to public 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.

(l) Fees collected under this ordinance will go toward public facilities for county-wide services. The most conservative judgment supports the finding that facilities of at least the type provided for by this ordinance will be needed. It is not possible to specify now the location of individual facilities. In any event, a necessarily tentative attempt to specify the potential location, schedule or design would not materially affect the fee amount, since neither the need nor the services will generally be geographically differentiated. Nonetheless, such an attempt would add significantly to the delay and expense of implementing fees, adversely affecting both those paying the fee and county taxpayers in general.

(m) Development within incorporated cities will cause more than ninety percent of the demand for new public facilities in the identified categories. The County has incorporated into its general plan the concept that what is urban development should be municipal. Substantially greater development outside the existing cities would cause unacceptable loss of productive agricultural land.

(n) The cities do not and cannot provide the identified public facilities and the related services, while the county is required to do so.

(o) Development within the cities should pay a fair share toward the new public facilities which it requires. Otherwise, the costs of those public facilities will be growth and unfairly borne by other county taxpayers, specifically those residing in the unincorporated area of the county, or will unfairly reduce the level of service provided to present county residents.

(p) In order to recover its costs resulting from development within cities, the county must exercise authority over that development, solely to the extent of requiring payment of a fee.

(q) The purpose of the fees required by this ordinance is to pay for costs of additional public facilities, improvements, fixed assets and furnishings used to provide sheriffs services in the jails, justice services, general administration, public and mental health services, public assistance services, regional parks, libraries and animal shelters.

(r) The fees received pursuant to this ordinance are to be used to assess the need for, plan, design, construct, develop, lease-purchase and otherwise acquire the public facilities, improvements, fixed assets and furnishings identified in the preceding paragraph.

(s) Residential projects and commercial and industrial improvements bring additional residents and employees into the County. Those residents and (except as specified in the Initial Report and not charged fees under this ordinance) those employees will need social, health and mental health, probation, jail, justice and county administrative services, parks, veterans services, animal shelters and libraries.

(t) Fees collected under this ordinance will be used to fund public facilities required to furnish the services listed in subdivision (q), as more specifically described in the AB1600 study, Exhibit "B". These services and public facilities are needed as a result of the additional residents and employees in the developments which pay the fee.

(u) Adoption of this ordinance does not have the potential to cause a significant effect on the environment. This ordinance 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, it will be subject to a fee. This ordinance does not approve or foreordain approval of any public 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.

(v) This ordinance is also 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, or approve expansion of the area for which county services are provided.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-131. Definitions

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

(b) **Exempt construction** means

(1) those projects for which a building permit was issued prior to October 26, 1992, or the effective date of this ordinance, whichever is later, or

(2) projects which do not otherwise require the payment of city development fees due to their minor nature.

(Ord. no. 1446, §1; Ord. No. 1465, §1)

Sec. 11-132. Authorization required

After October 26, 1992, or the effective date of this ordinance, whichever is later in time, all construction not otherwise exempt pursuant to provisions of Section 11-131(b), shall be subject to and pay the county public facilities fee. Such development fee shall be paid and collected as provided in Sections 11-133 and 11-134. Construction and development shall not be otherwise regulated under this ordinance.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-133. Payment of fee

(a) **Time for Payment of Fee.** Fees 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 are met, at the time of issuance of a building permit for any non-exempt construction under the provisions of this ordinance. Government Code section 66007 requires that to collect fees at the building permit stage, an account has to be established for the fees to be collected and funds appropriated, and the board has to adopt a proposed construction schedule or plan prior to final inspection of issuance of the certificate of occupancy.

(b) **Fee Amounts.** Except to the extent reduced by an in-lieu contribution approved pursuant to subdivision (d), which in-lieu contribution will only apply to development within the unincorporated areas of the county, fees under this section shall be payable in those specific amounts designated by the board of supervisors, and amended from time to time by board resolution. The amount payable shall be reduced by the amount of any fee charged to the developer by any other jurisdiction to provide funding for the same county facilities. During the first five calendar years beginning after adoption of this ordinance, the board of supervisors may, without a further study such as the Initial Report, adjust by resolution the fee amounts one time annually based on the percentage increase in the Engineering News Record Construction Cost Index or a

similar index which measures typical construction costs for facilities generally similar to those to be built by the county.

(c) **Appeal.**

Any person may protest the imposition of any fee imposed under the provisions of this ordinance by meeting the following requirements:

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

(2) Serving written notice on the clerk to the board of supervisors, which notice shall contain all of the following information:

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

(B) A statement informing the board of supervisors of the factual elements of the dispute and the legal theory forming the basis of the protest.

(3) The protest must be filed no later than 90 days after the date of the imposition of the fee hereunder.

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.

(d) **Demolition or destruction offset.** Where a building permit is issued within two years after demolition on the same lot, 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, the amount of new construction taken into account under this ordinance shall be reduced by the number of square feet which were demolished or destroyed.

(e) **In-lieu Contribution.** The county may authorize for affected development within the unincorporated areas of the county, in connection with approval of a subdivision map or any other development approval subject to a required public hearing before any agency of the county, the substitution of completed facilities or another contribution of at least equivalent value to the public facilities fee in place of all or part of the fees required under this ordinance. The facilities or other contribution must reduce the need for new county public facilities in one or more of the areas specifically identified in this ordinance as being supported by these fees. Where the facilities or other contribution exceed in value the fee amount in the category or categories in which a benefit is provided, the county may (but shall not be required to) credit the excess value against fees in other categories and may further provide for a compensating allocation to the other categories of future fee receipts from the category in which a benefit is provided.

(f) **Information Required.** Where the county is to issue a building permit, the person liable for the fee shall submit to the Department of Environmental Management such information as the Department may require to calculate the amount due, or, where a city certifies square footage and use, or number of dwelling units, pursuant to section 11-134(b), the information necessary to calculate the fee shall be submitted to the city by the applicant.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-134. City collection of fees

(a) **Collection of fee.** Each incorporated city within the county shall, pursuant to a separate agreement entered into between that city and the county, collect the fee required under the provisions of this ordinance, and in the amount as may be amended by subsequent county resolution, on behalf of the county. The city will collect a fee for all non-exempt property pursuant to provisions of this ordinance and the attached AB1600 study, or as that fee may be modified 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) **Remitting of fee by city.** Each city shall remit to the County, on a quarterly basis, the sum of those fees collected during that quarter. The quarter shall be based upon a fiscal year quarter. The remittance shall be less any administrative charges as set out in (c) below.

(c) **Administrative charge for city.** Each city which collects the county facilities fee pursuant to subsection (a) and pays the fee to the County Tax Collector pursuant to subsection (b) shall be entitled to retain an administration charge specified pursuant to section 11-136.

(d) **County to defend.** Upon reasonable notice by a city after notice of any claim or challenge, the county will defend, at its expense and with counsel of its choice, indemnify and hold harmless any city for any losses incurred as a result of implementation of the collection system, including claims, demands, protest, or causes of action and /or judgments, including attorneys fees and costs, except to the extent of the city's own willful misconduct or gross negligence.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-135. Use of fees

(a) **Fee allocation.** The County Auditor-Controller shall allocate all fees received into accounts corresponding to the categories of facilities shown in the Final Report, attached to this ordinance. The amount so allocated shall be the fee amount attributable to the respective category of facilities under the Final Report (as it may be

adjusted from year to year). The County Auditor-Controller shall maintain such accounts from year to year.

(b) 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 public facilities of the type corresponding to that fund, except as provided in subsections (1) and (2) below. In no event shall any fee collected pursuant to this ordinance (other than an administrative or processing charge) be expended for any purpose other than expanded or additional public facilities described in the Final Report.

(1) Funds may be advanced from one account to another where the advance is for public facilities which are proceeding sooner than those public 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.

(2) Funds may be transferred between accounts where the transferred amount is used for a public facility for which the actual cost attributable to new development as shown by subsequent evidence exceeds the corresponding amount estimated by the Initial Report, provided that this subsection provides no authority to increase in any respect the aggregate fee amount payable by any development.

(c) Government Code requirements. The County Auditor-Controller shall deposit, invest and account for all fees received under this ordinance pursuant to California Government Code section 66006 (and any successor provision). AR fees received under this ordinance and not expended or committed within five (5) years after receipt shall be refunded pursuant to California Government Code § 66001 (and any successor provision), unless the county otherwise complies with the requirements of section 66006.

(d) Reference to Initial Report A determination as to whether a facility falls within any category in the Final Report shall be made with reference to the Initial Report and if necessary, its background information.

(e) Annual Report. An annual report shall be prepared by the county and provided to all cities to account for the use of all the fees collected under this ordinance. This report shall be prepared pursuant to the provisions of Government Code section 66006. The cities will provide any fiscal information relative to the collection of these fees that is requested by the Auditor-Controller, in order to facilitate the preparation of these reports.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-136. Administration

(a) Charge. The County Auditor-Controller shall determine the estimated costs of administration of this ordinance 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 ordinance, 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 Section 11-135(a). 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 at the end of each quarter. The latter option has been selected by all of the cities for the recovery of all administrative charges, at least initially.

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

(3) The board of supervisors may, by ordinance, modify or terminate any charge set under this section and may establish additional charges related to administration of this ordinance.

(b) Additional rules and regulations. The board of supervisors may adopt by resolution rules, regulations, guidelines and procedures for administration of this ordinance. The County Department of Environmental Management shall provide for availability of pre estimates of fees payable by impacting developments. The Environmental Management Department, County Assessor and County Auditor-Controller 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 ordinance.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-137. Enforcement

(a) Civil proceedings. The County Counsel may institute civil proceedings to enforce this ordinance, including without limitation actions for injunction and civil penalties. 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 ordinance interferes with provision of public services, and shall be a public nuisance.

(b) Costs of securing compliance. Any person or entity not in compliance with this ordinance shall be liable, in addition to other amounts provided for in this section, 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 the fees.

(c) Interest. Interest shall accrue on all fees not paid when due pursuant to this ordinance 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.

(Ord. No. 1446, §1; Ord. No. 1465, §1)

Sec. 11-138. Termination of ordinance as it applies to cities

It is provided that the provisions of this ordinance, as they apply to the imposition and collection of capital facilities fees by the cities in Solano County on behalf of the County, for non-exempt construction within the incorporated limits of cities, shall terminate upon any of the following events occurring:

(a) The county board of supervisors fails to adopt, impose, and levy a Solano County Public Facilities Fee as authorized by provisions of Government Code section 66000 et seq.

(b) The county fails to maintain the land use policy of "what is urban shall be municipal," or unreasonably modifies, amends, or alters the Solano County General Plan to increase existing densities or existing designations of residential, commercial and industrial land uses as presently in place or presently under study, and so long as existing county land uses are subject to limitations on land use development similar to those provided by County Measure "A," whether those provisions continue in effect by act of the electorate or are imposed by the board of supervisors.

(c) The county public facilities fee to be collected by cities is greater than the rate imposed on development occurring in the unincorporated areas of the county.

(d) The county fails to adopt a public facilities capital improvement plan in support of said fee, such plan having been initially adopted, and thereafter annually updated, following a noticed public meeting between representatives of the county and the cities within the county, so that close cooperation can be maintained between the county and the cities within the county with respect to the capital improvements proposed to be funded by the county public facilities fee.

(Ord. No. 1446, §1; Ord. No. 1465, §1; Ord. No. 1466, §1.)

Sec. 11-139. Severability

If any provision of this ordinance, or its application to any person or circumstances, shall be held invalid or unenforceable, the remainder of this ordinance shall not be affected; the provisions of this ordinance are intended to be severable. If the amount of any fee payable under this ordinance is held excessive, or invalid or unenforceable in part, the remainder of the fee shall nonetheless be due and payable.

(Ord. No. 1446, §1; Ord. No. 1465, §1)