

# IMPLEMENTING POLICIES FOR THE CITYWIDE REGIONAL STREET AND NEW GROWTH AREA MAJOR STREET IMPACT FEES

**Proposed 2016**

The following policies are intended to implement Fresno Municipal Code Section 12-4.1006.

- (1) **Definitions.** The following definitions shall be used to interpret the terms used in these Guidelines. Any words not specifically defined shall be subject to the reasonable interpretation of the Director.
- (a) **“Adjacent Street”** or **“Frontage Street”** shall mean all streets that abut the parcel being developed including remainder parcels created by a subdivision map or parcel map.
  - (b) **“Affordable Housing Development”** shall mean housing that is available to low income families (80% Area Median Income and below) whereas no more than thirty percent (30%) of the annual household gross income is expended on housing.
  - (c) **“Commercial retail”** shall mean any use allowed in a commercial retail designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of commercial retail.
  - (d) **“Commercial office”** shall mean any use allowed in a commercial office designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of commercial office.
  - (e) **“Development”** shall include any work or improvement that requires a permit under the Fresno Building Code, but shall not include any work or improvement for off-site constructions or improvements to be dedicated to public use as a condition of a Development Entitlement.
  - (f) **“Development Entitlement”** shall mean a building permit, conditional use permit, site plan, rezone, plan amendment, subdivision as defined under the Subdivision Map Act.
  - (g) **“Director”** shall mean the Director of the Public Works Department or his or her designee.
  - (h) **“Eligible Right of Way”** shall mean right of way dedications subject to reimbursement and credits as provided in these guidelines.
  - (i) **“Eligible Street Improvements”** shall mean those street improvements identified as eligible for construction using the street impact fees and eligible for credit towards street impact fee obligations and reimbursement using street impact fee program funds shall include in particular the following:

The following major street improvements in Table 1 shall be eligible for reimbursement provided the paving improvements are built to permanent City standards, planned location, planned grade, and all underground utilities have been installed (exceptions to the undergrounding requirement may be pursuant to Section (6)(a)):

**Table 1.**

Expressway	Landscaped median, six travel lanes, shoulders, curb and gutter, all turn pockets <sup>1</sup> and bus bays pursuant to City standards.
Superarterial	Landscaped median, four to six travel lanes, shoulders, and curb and gutter pursuant to City standards.
6-lane arterial	Landscaped median, six travel lanes, shoulders, and curb and gutter pursuant to City standards.
4-lane arterial	Landscaped median, four travel lanes, shoulders, and curb and gutter pursuant to City standards.
Collector	Two-way left turn lane, two to four travel lanes, shoulders, curb and gutter pursuant to City standards.
Trails	Difference in cost between standard frontage improvements for land use and location, and trail cost built to standard.
Major Bridges	Includes widening, replacement and new construction of bridges and culverts on Expressways, Super Arterials, and Collector roads.
Railroad Crossings	All railroad crossings on Expressways, Super Arterials, and Collector roads.
Right-of-way	Eligible ROW not to exceed appraised value.
Soft costs	Engineering (6% <sup>2</sup> ), Plan Check (2% per MFS), Inspection (4.1% per MFS)

<sup>1</sup> Removal of existing median island to create mid-block left turn access into a property where desired by the developer shall not be considered as an eligible improvement.

<sup>2</sup> Engineering costs may be increased above 6% for reasonable costs that exceed 6% in the Director's discretion.

Center section improvements shall consist of two travel lanes and shoulders plus median curb, concrete island cap and left turn pocket pavement on arterials, super arterials and expressways, and the two-way left turn lane on collectors. Removal of median island to create mid-block left turn access into a property where desired by the developer shall not be considered as an eligible street improvement. All center section improvements (including median island landscaping) would be eligible for construction credits against the entitlements respective fee obligations credits provided they are constructed to permanent road standards and alignments.

- (j) **“FAR”** shall mean floor to area ratio and shall be calculated as the building footprint divided by the parcels net acreage. When the FAR cannot be readily determined, the FAR assumptions used in the development of the impact fees as contained in the Nexus Report shall be used for the respective land uses.
- (k) **“Grid Street”** shall mean those streets that lie on township, section, or quarter section alignment.
- (l) **“Guidelines”** shall mean these **Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees as adopted by Council** by resolution pursuant to Fresno Municipal Code Section 12-4.1006.
- (m) **“Heavy industrial”** shall mean any use allowed in a heavy industrial designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of heavy industrial.
- (n) **“Light industrial”** shall mean any use allowed in a light industrial designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of light industrial.
- (o) **“More intensive use”** shall mean a use of the higher order of the following listed land uses (starting with the lowest and ending with the highest order): heavy industrial, light industrial, residential (low-medium), residential (medium/high-high), commercial office and commercial retail.
- (p) **“New Development”** shall mean any development on vacant land or additions or expansions on existing development wherein square footage on the development is increased. It shall not include remodels or reuse wherein the overall square footage is not increased.
- (q) **“New Growth Area”** shall mean that area as designated in a “New Growth Area Map” kept on file in the Public Works Department and made available to the public. The New Growth Area Map shall also be posted on the City website.
- (r) **“Net Acreage”** shall mean a parcels gross acreage less any dedications for major street facilities right of way including both eligible and non-eligible

street improvements. Internal streets, alleys, or other dedications within a development project shall not be used to reduce the net acreage.

- (s) **"Nexus Study"** shall mean the Nexus Study adopted by Council on December 8, 2016, and on file with the Public Works Department.
- (t) **"Operative Date"** of these guidelines shall mean the date the guidelines become effective through a Council resolution that adopts these guidelines.
- (u) **"Parcel"** shall mean a legal lot of record including any underlying fee title area of easements.
- (v) **"Remodel"** shall mean the physical rebuild, reconstruction of all or any portion of an existing building which does not add square footage.
- (w) **"Residential (low-medium)"** shall mean any residential land use developed at less than 12 units an acre.
- (x) **"Residential (medium/high-high)"** shall mean any residential land use developed at 12 units or more an acre.
- (y) **"Reuse"** shall mean conversion of any existing building from one use to another use which does not add square footage.
- (z) **"Street Impact Fees"** shall mean the Citywide Regional Street Impact Fees and New Growth Area Major Street Impact Fees as adopted by Council in the Master Fee Schedule.
- (aa) **"UGM"** shall mean Urban Growth Management as provided in the Fresno Municipal Code.
- (bb) **"Utilities"** shall mean sewer, storm drain and water mains that must be installed underneath permanent paving in order for the street construction to be eligible for credits or reimbursement of major street impact fees.

## (2) **City Responsibilities/Rights**

- (a) **Other Funding.** City shall secure funding for street improvements including rail crossings, bridges, grade separations, through state and federal programs wherever possible.
- (b) **Annual Updates.** City shall perform annual Street Impact Fee updates either using the ENG 20 City CPI Average or based on actual costs.
- (c) **City Reimbursements.** The City is eligible for reimbursement for construction of roadway segments for that portion of the work that is within the shoulder to shoulder limits which is constructed with non-impact fee sources, and consistent with the "first in- first out" rule. Funding sources

eligible for reimbursement include but are not limited to Flexible Measure C monies, gas taxes, Prop 42 or 111 funds, CDBG, RDA tax increment, General Fund, or similar discretionary sources. Reimbursements that the City receives will inure back to the parent funding source, and used in a manner consistent with the funding source guidelines.

Exclusions to this policy are as follows: Capital Improvements listed in the regional or new growth area capital improvement list that are funded using Tier 1 Measure C Tier funds, competitive state or federal grants, state or federal earmarks. This exclusion shall also apply to any developer who is the beneficiary of the fore mentioned funds.

- (d) **Cap on City Reimbursements.** The City must document costs and apply for reimbursement in the same manner required of developers. Reimbursement to the City shall not exceed 25% of the money available for reimbursement in any fiscal year unless all other claims have been paid in full.

- (3) **Determination of Amount of Impact Fee Obligation.** All fees are acreage based utilizing the net acreage of the parcel.

The amount of the impact fee obligation for a particular development shall be calculated by multiplying the net acreage by the per acre fee for the particular land use.

- (a) **Regional Street Impact Fee.** The Citywide Regional Street Impact Fee will be a condition on all development entitlements granted and shall be calculated on a net acreage of the entire property subject to the development entitlement based upon planned land use as provided below. Notwithstanding the above, fees shall be based upon actual land use for developments in the C-M zone district and for development projects developed inconsistent with the planned land use. Any dispute between City staff and the developer as to what the actual land use is shall be resolved by the Director of the Development and Resource Management Department (subject to appeal in Section 10.)

- (b) **New Growth Area Major Street Impact Fee.** The New Growth Area Major Street Impact Fee and the Citywide Regional Street Impact Fee will be a condition on all development entitlements granted in the New Growth Area and shall be calculated on a net acreage of the entire property subject to the development entitlement based upon planned land use as provided below. Notwithstanding the above, fees shall be based upon actual land use for developments in the C-M zone district and for development projects developed inconsistent with the plan land use. Any dispute between City staff and the developer as to what the actual land use is shall be resolved by the Director of the Development and Resource Management Department (subject to appeal in Section 10.)

**Table 2.**

Land Use	Regional Street Impact Fee per Acre	New Growth Area Major Impact Fee per Acre	Regional Street Impact Fee + New Growth Impact Fee per Acre
Residential (Low-Medium) <12 units/acre <sup>3</sup>	\$7,617	\$20,968	\$28,585
Residential (Medium/High-High) ≥ 12 units/acre	\$14,790	\$40,748	\$55,538
Commercial Retail FAR @ 25%	\$13,469	\$37,850	\$51,319
Commercial Office FAR @ 25%	\$14,266	\$35,826	\$50,092
Light Industrial FAR @ 40%	\$4,056	\$11,559	\$15,615
Heavy Industrial FAR @ 40%	\$2,493	\$7,014	\$9,507

#### (4) Payment of Fees; Credits

- (a) **Time of Payment of Impact Fees.** Street Impact Fees shall be due and payable at the time of building permit issuance unless otherwise required by State law or unless otherwise allowed to be deferred to certificate of occupancy by the Fresno Municipal Code or other Council action. Street impact fees may be paid on the building footprint divided by the FAR for non-residential development, but not to exceed the total amount of the effective fees provided in Section 3 multiplied by the total net acreage. For parcels to be fully developed, all Street Impact Fees shall be paid based upon the net acreage of the property that is subject to the development entitlement for which the building permit is pulled. If the development entitlement was a subdivision, the amount of fee required to be paid at building permit will be an equal proportionate share that the parcel for which the building permit is pulled bears to the total size of all of the lots under the subdivision.
- (b) **Prepayment of Impact Fees.** Notwithstanding the above, Street Impact Fees may be paid, at the election of the developer, at any time after the developer receives an approved development entitlement. If the developer prepays his or her fees pursuant to this provision, they will not be subject to any Major Street Fee increases (automatic inflationary increases or other

<sup>3</sup> Acreage, for the purpose of determining the applicable use under Tables 2 and 3, shall be based on net acreage which is defined in Section (1)(r).

increases adopted pursuant to the Mitigation Fee Act through hearing and notice) on any future building permit only to the extent that the building permit is pulled within four years or all street improvement and right-of-way dedication requirements required as a condition of the development entitlement are completed.

- (c) **Credits for Planned Construction.** When a developer is required or conditioned to construct Eligible Street Improvements, the developer shall be given credits against their Street Impact Fee obligation for the entire development for which the Eligible Street Improvement construction requirements were imposed. The construction cost estimate shall be prepared by a registered civil engineer using the units costs used to determine the total capital needs for the respective funds. The construction credit shall not exceed the approved engineer's estimate. This includes curb to curb or shoulder on opposite side as appropriate. Credits will only be provided for improvements that are secured for by a form of security acceptable to the Public Works Director, City Controller and City Attorney. Any credits given under this provision will be deducted from any reimbursement provided in Section (6). In the event it is determined that a developer was given fee credits in excess of actual construction costs, the developer shall pay to the City the outstanding amount owed.
- (d) **Credits for Previously Constructed Street Improvements.** Any development in the New Growth Area which at the time the development entitlement is approved has all Eligible Street Improvements along its frontage(s) and those improvements extend to the nearest major intersection and were in place on August 28<sup>th</sup>, 2007 shall receive full credit for the New Growth Area Major Street Impact Fee as provided in Table 4. The above provision shall not apply if the City determines that the street improvements were installed through public monies, other than impact fees or funds coming from an assessment district created to install street improvements.
- (e) **Credits for Previous Payment of UGM Fees toward New Growth Area Major Street Impact Fees.** Any development in the New Growth Area on property, which has previously satisfied its UGM street improvement obligations (through full payment of UGM major street and UGM major street bridge fees or completed construction of UGM major street improvements that are Conditions of Approval for the subject property in excess of the dollar value of the combined UGM major street and UGM major street bridge fee obligation for the subject property), shall receive a full credit for the New Growth Area Major Street Impact Fee as provided in Table 4. UGM major street improvements that are Conditions of Approval for the subject property in excess of the dollar value of the combined UGM major street and UGM major street bridge fee obligation for the subject property; and that are secured for by a form of security acceptable to the Public Works Director, City Controller and City Attorney, and are included within an executed Subdivision Agreement, Parcel Map Agreement or Development Agreement between the developer and the City which ensures that the UGM major street

improvements shall be completed prior to release of the security and acceptance of the development; shall be acceptable as an alternative to completing construction of those improvements for the purposes of obtaining the full credit for the New Growth Area Major Street Impact Fee. Fee deferral covenants do not satisfy the developer's UGM street improvement obligations.

- (f) **Credits for Off-Site Regional Streets.** Any parcel that has previously contributed to the construction of off-site regional street improvements shall be eligible for a dollar for dollar credit (without interest or inflationary adjustment) towards the Regional Street Impact Fee in the amount the developer can prove the parcel contributed to off-site nonadjacent regional streets for shoulder to shoulder improvements that were constructed and dedicated to the City.
- (g) **Annexation Status Exemption.** Any developer that has an approved development entitlement(s) which has been approved for at least two weeks prior to the Operative Date of these Guidelines that could obtain building permits but for the need to be annexed is exempt from the Major Street Fees and must pay the fees that the development project would be subject to prior to the adoption of these policies. Eligibility for this exemption must be determined in the first instance by the Appeal Board under Section 10 which may be appealed to Council. A developer waives any right to this exemption if they pay the Major Street Fee without seeking this exemption and are issued a building permit. This exemption is in addition to any other right that may exist at law or in these policies that may exempt development from paying the Major Street Fee (e.g., vesting rights, credits, etc.).
- (h) **Expired Final Subdivision Map Exemption for Regional Street Impact Fees.** On January 1, 2011, this Section (4)(h) shall expire and no longer be effective.

**(5) Application of Fees to Development Types**

**(a) Remodel, Reuse or New Development on Existing Buildings.**

1. If a reuse is not a more intensive use (as defined in Section (1)(o)), than the original use, there is no Street Impact Fee obligation and no obligation on the City to provide a credit.
2. If a reuse is more intensive than the original use, the developer shall be required to pay the difference between the current amount of the Street Impact Fee obligation for the old use and current amount of the Street Impact Fee obligation for the new use.
3. If the developer proposes to convert apartments to residential condos, there is no Street Impact Fee obligation.



4. If the developer proposes to convert a warehouse to lofts or residential condos to office condos, than the Director shall determine if the use is more intensive and apply the relevant provision of paragraph 1. or 2. above.
5. If a developer proposes new construction on a property that is partially developed that exists prior to the operative date of these Guidelines, the Street Impact Fee would be applied to the incremental increase proportionate to the respective floor to area ratios (25% for commercial and 40% for industrial). For example, if an office adds 5,000 square feet the FAR/density comparisons equates to .46 acres. The fee would be the per acre fee multiplied by 0.46 acres. In no case shall anyone pay more than the amount of the total net acreage of the parcel multiplied by the applicable fee pursuant to Section 3. This Section (5)(a)5. does not apply to additions on single family homes or any addition to a residential development that does not add an additional unit.
6. If a developer proposes a remodel that does not involve a reuse to a more intensive use or an expansion of square footage, there is no Street Impact Fee obligation.

**(b) New Construction on Vacant Parcels**

1. Building permit applications for new construction on vacant parcels which have no vesting rights will be subject to the Street Impact Fee.
2. Building permit applications for new construction on vacant parcels which have vesting rights will be subject to the street fee/exaction conditions imposed at the time the vesting rights were created, or as provided by agreement or State law.

**(6) Reimbursement Policy**

- (a) **General Rule.** Developers shall be reimbursed for Eligible Street Improvements less the amount of the developer's Street Impact Fee obligation provided the paving improvements are permanent, and all underground utilities have been installed. If a Developer has paid any Street Impact Fees, they shall receive a reimbursement for any amount of the Street Impact Fee they have paid. Exceptions to the undergrounding requirement may be made if the Director finds that it is in the best interest of public safety to construct street improvements prior to the installation of the underground utilities.
- (b) **Order of Reimbursements.** Reimbursements shall be made on a first in-first out basis.

- (c) **Timing of Reimbursements.** Reimbursements will be made in April and October. More frequent reimbursement may be made predicated on impact fee cash flow and other extenuating circumstances.
- (d) **Future Outstanding UGM Reimbursement Obligations.** Future outstanding UGM amounts owed, if any, will be reimbursed on a first in first out basis and integrated with future reimbursements determined by these guidelines. All future eligible street construction costs determined under these guidelines and performed by a holder of a legally vested UGM entitlement shall be considered eligible street construction and shall be reimbursed with exception to twenty feet of the parcel(s)'s frontage improvements measured from the face of curb perpendicularly to street's centerline that which the project lies. The exception of twenty feet of the parcel(s)'s frontage improvements shall also be made to any other planned and vested UGM entitlement for off-site (non-adjacent) street, bridge, railroad, or trail improvements.
- (e) **Use of Reimbursements for Fee Obligations.** No developer will be allowed to utilize reimbursements rights against fee obligations unless they are at the top of the respective reimbursement list. Notwithstanding the above, a developer may use reimbursement rights to satisfy their fee obligation for the development project for which the Eligible Street Improvement works that created the reimbursement rights were conditioned and/or required. If the constructed Eligible Street Improvements were not a formal condition or requirement a development entitlement, the Developer shall have no right to use the reimbursement rights against any fee obligations.
- (f) **Allocation of Fees Toward Reimbursements.** The City shall appropriate a minimum of 50% of the anticipated Street Impact Fee revenue for developer reimbursement on an annual basis. The City reserves the right to sponsor capital improvements, as identified and approved for construction by Council, that address public safety items or are best sponsored by the City to take advantage of certain utility relocation rights that the City enjoys provided such improvement are listed in the Capital Improvement Plan for the Street Impact Fee and the improvements are to street segments which meet one or more of the criteria A and one of criteria B as provided below:

Criteria A

- Overhead utilities can be relocated via a franchise move or undergrounded with a Rule 20 Underground Utility District.
- The City has obtained Federal or State grant funding for the project which will provide at minimum a 1 to 1 match on street impact fee dollars.
- The City-sponsored project is on a property with no current development activity.
- The City-sponsored project involves bridge construction or widening of a railroad crossing in excess of \$250,000.

Criteria B

- The roadway traffic volume is at level of service (“LOS”) D<sup>4</sup> or worse.
- The roadway is a planned but unconstructed facility that when built will relieve traffic on an adjacent roadway which is at LOS D or worse.

**(7) Adjacent Street Improvement Requirements**

- (a) Credits and Reimbursements.** For all work required in this Section (7), developers shall be eligible for credits and reimbursements for Eligible Street Improvements consistent with the policies provided above.
- (b) CEQA Mitigation.** Developer shall construct all adjacent (frontage) street improvements required to mitigate significant and/or cumulatively significant impacts identified under CEQA.
- (c) Frontage Requirements.** When new development is required to construct Eligible Street Improvements as identified on Table 1 along the entire frontage of the legal parcel on which the development occurs, the new development is required to dedicate street easements and construct all other street improvements along its frontage which may include, but is not limited to, bike lanes, turn lanes, curb and gutter, sidewalks, landscaping, fences/block walls, street lighting and other required improvements on the developer’s project frontage. All development shall be subject to Fresno Municipal Code Sections 12-4.1001 and 12.4.1004.
- (d) Bridge Facilities.** Developer shall be required to participate in the design and construction of major bridge facilities when the developer’s required frontage improvements cross or terminate at a bridge that does not have sufficient width to accommodate the full width of the required street improvements or as required by the entitlement’s conditions of approval.
- (e) Railroad Facilities.** Developer shall be required to participate in the design and construction of railroad crossing improvements when the developer’s required frontage improvements cross or terminate at a crossing that does not have sufficient width to accommodate the full width of the required street improvements or as required by the entitlement’s conditions of approval.
- (f) Ineligible Street Improvements.** Any cost for major street construction other than required frontage improvements or CEQA mitigation directly attributable to the Development that is not an Eligible Street Improvement under these Guidelines, shall be considered ineligible street improvements. At the request of the Developer, the City shall document the construction cost and record a notice of potential lien on the parcel(s) adjacent to the

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<sup>4</sup> LOS D is defined in the 2025 Fresno General Plan.

construction if street improvements are outside of these guidelines and not a CEQA mitigation.

**(8) Off-Site (Non-Adjacent) Street Improvement Requirements**

- (a) Credits and Reimbursements.** For all work required in this Section (8), developers shall be eligible for credits and reimbursements for Eligible Street Improvements consistent with the policies provided above.
- (b) CEQA Mitigation.** Developer shall construct all off-site (non-adjacent) street improvements required to mitigate significant and/or cumulatively significant impacts identified under CEQA
- (c) Center Section Requirements.** Developer shall construct center section improvements as defined by Section 1(i) between the project frontage and the nearest geometrically complete center section improvements along the predominant path of travel as identified by a trip trace analysis. The amount of over exaction the Director may require is defined in Section (8)(g).

Improvement requirements include: railroad crossings (consistent with paragraphs (8)(e) below), bridges (consistent with paragraphs (8)(d) below), Eligible Street Improvements, and median islands.

- (d) Off-Site (Non-Adjacent) Bridge Requirements.** Developer shall be required to participate in the design and construction of major bridge facilities when the center section improvements cross or terminate at a bridge that does not have sufficient width to accommodate the full width of the required street improvements or as required by the entitlement's conditions of approval.

Developer shall be required to participate in the design and construction of major bridge facilities if center section improvements create a situation deemed to not meet FHWA or Caltrans standards when street construction crosses or terminates at the bridge and the bridge does not have sufficient width to accommodate the street construction, including transitions.

- (e) Off-Site (Non-Adjacent) Railroad Requirements.** Developer shall be required to participate in the design and construction of railroad crossing improvements when center section improvements cross or terminate at a crossing that does not have sufficient width to accommodate the full width of the required street improvements or as required by the entitlement's conditions of approval.

Developer shall be required to participate in the design and construction of railroad crossing improvements if center section improvements create a situation deemed to not meet FHWA or Caltrans standards when street construction crosses or terminates at the railroad and the railroad does not

have sufficient width to accommodate the street construction, including transitions.

**(f) Other Off-Site (Non-Adjacent) Street Improvement Requirements.**

1. **Regional Street Point of Constriction.** In addition to the above, as a condition of any development's entitlement, the City may condition an entitlement with the requirement to construct a portion of, or provide a cash contribution towards, any component of the citywide regional street system (within 1.5 miles of the development) that the City has identified as being a "point of constriction" in the predominate direction of travel wherein the peak hour level of service is "D" or worse.
2. **New Growth Area Street Point of Constriction.** In addition to the above, as a condition of any development entitlement in the New Growth Area, the City may condition an entitlement with the requirement to widen a portion of, or provide a cash contribution towards, any component of the major street capital improvement program of the new growth area (within 1 mile of the development) that the City has identified as being a "point of constriction" in the predominate direction of travel wherein the peak hour level of service is "D" or worse.

**(g) Maximum Off-Site (Non Adjacent) Street Improvement Requirements.**

1. **Street Impact Fee Maximum.** The total amount of off-site (non adjacent) street improvements the City can require of a developer (whether construction, cash or a combination thereof) in section (8)(c)(d)(e) and (f)(1), above, shall be limited to the following cumulative percentages of the developers total Street Impact Fee obligation provided in Table 5.

**Table 5.**

<b>Total Street Impact Fee Obligation</b>	<b>Maximum Percent of Off-Sites</b>
\$0-\$250,000	20%
\$250,000-\$500,000	15%
\$500,000-\$1,000,000	10%
Over \$1,000,000	5%

For example if a developer has a Regional and New Growth Street Fee obligation of \$1,050,743.70 the maximum amount of non-CEQA mitigation off-site improvements would be calculated as follows:

**Ex. 1**

Fee Obligation	\$1,050,743.70		
\$250,000		20%	
0	@	=	\$ 50,000.00
\$250,000		15%	
0	@	=	\$ 37,500.00
\$500,000		10%	
0	@	=	\$ 50,000.00
\$50,743	@	5% =	<u>\$ 2,537.15</u>
<b>Total</b>			<b>\$140,037.20</b>

2. **New Growth Area Fee.** The total amount the City can require of a developer for New Growth Area off-site (non adjacent) street improvements (whether construction, cash or combination thereof) in paragraph (8)(c)(d)(e) or (f)(2) shall be limited to the following cumulative percentages of the developer's total Growth Area Street Impact Fee obligation (as provided in Table 4).

**Table 6.**

Growth Area Street Impact Fee Obligation	Maximum Percent of Off-Sites
\$0-\$250,000	20%
\$250,000-\$500,000	15%
\$500,000-\$1,000,000	10%
Over \$1,000,000	5%

For example if a developer has a Growth Area Fee obligation of \$1,050,743.70 the maximum amount of non-CEQA mitigation off-site improvements would be calculated as follows:

**Ex. 2**

Fee Obligation	\$1,050,743.70		
\$250,000	@	20% =	\$50,000.00

\$250,000	@	15% =	\$37,500.00
\$500,000	@	10% =	\$50,000.00
\$50,743	@	5% =	<u>\$2,537.15</u>
<b>Total</b>			<b>\$140,037.20</b>

3. **Maximum Off-Site Cap.** Notwithstanding the above, the City can only require non-CEQA mitigation off-site (non adjacent) street improvements in this Section 8<sup>5</sup> to the extent that the amount of adjacent Eligible Street Improvements<sup>6</sup> plus the amount of Eligible Street Improvements CEQA mitigation<sup>7</sup> equals less than the amount of the developer's Street Impact Fee obligation<sup>8</sup> plus the maximum amount of the off-site street improvements provided in (g)(1) and (2).<sup>9</sup>

**Ex. 3**

Developer X		
Street Fee Obligation (A)	=	\$1,000,000.00
Max. Off Site (B)	=	\$ 100,000.00
Total Frontage Improvements	=	\$ 300,000.00
(Eligible Street Improvements) (C)	=	\$ 100,000.00
Total CEQA Improvements	=	\$ 400,000.00
(Eligible Street Improvements) (D)	=	\$ 200,000.00
Amount of Max Off-Site Cap = (A+B) – (C+D)		
(1,000,000.00 + 100,000.00) – (100,000 +200,000) = \$ 800,000.00		
RESULT: The City can require Developer X to construct full maximum of \$100,000.00 in Off Site.		

**Ex. 4.**

Developer Y		
Street Fee Obligation (A)	=	\$100,000.00

<sup>5</sup> As required under Sections (8)(c), (d), (e) and (f).

<sup>6</sup> As required under Sections (7)(c),(d) and (e).

<sup>7</sup> As required under Section (7)(b) and (8)(b).

<sup>8</sup> As required under Section (3)(a), (b) and (c).

<sup>9</sup> As provided under Section (8)(g)1. and 2.

Max. Off Site. (B)	=	\$ 25,000.00	Total
Frontage Improvements	=	\$300,000.00	
(Eligible Street Improvements) (C)	=	\$150,000.00	
Total CEQA Improvements	=	\$200,000.00	
(Eligible Street Improvements) (D)	=	\$100,000.00	
Amount of Max Off-Site Cap = (A+B) – (C+D)			
(100,000.00+25,000.00) – (150,000.00 + 100,000.00) =		<\$125,000.00>	
RESULT: The City cannot require Developer Y to construct any non-CEQA Off Sites.			

## Ex. 5

Developer Z			
Street Fee Obligation (A)	=	\$100,000.00	
Max. Off Site (B)	=	\$ 25,000.00	
Total Frontage Improvements	=	\$300,000.00	
(Eligible Street Improvements) (C)	=	\$ 50,000.00	
Total CEQA Improvements	=	\$200,000.00	
(Eligible Street Improvements)(D)	=	\$ 60,000.00	
Amount of Max Off-Site Cap = (A+B) – (C+D)			
(100,000.00+25,000.00) – (50,000.00+60,000.00) = \$15,000.00			
RESULT: The City can require Developer Z to construct \$15,000.00 of Off Site improvements.			

- (h) **Utility Work; Waivers.** The cost to install utilities shall not be included in calculation of caps in (8)(g) in situations where the utility owner (i.e. sewer, water, storm drain) has a cash balance in the fund which can be immediately reimbursed to the developer. Utilities that are required for the developer shall also be excluded from the calculation of the cap. However, any utility cost that is not required for the development and is in excess of the available cash balance in the respective utility fee account shall be included in the calculation of the cap. If there are utilities that need to be constructed prior to the street work and the developer is not reliant upon these utilities to serve his or her development, the developer may petition the Director for a waiver of a portion or all of the off-site the street improvements requirements. The request for waiver will be reviewed and a determination made by the Director based on fiscal impact caused by the required utility installation. If there is sufficient cash balances in the relevant utility fund, the developer may be required to install the improvements.



- (i) **Non-Eligible Off-Site Street Improvements.** Any cost for off-site (non-adjacent) street construction, that is not an Eligible Street Improvement, as provided in these Guidelines, shall be considered non-eligible street improvements. At the request of the Developer, the City shall document the construction cost and record a notice of potential lien on the parcel(s) adjacent to the construction if street improvements are outside of these guidelines and not a CEQA mitigation.

**(9) Right of Way**

- (a) **General Rule.** The developer shall dedicate to the City at no cost all major street rights of way ("ROW") along their frontage. The developer shall dedicate to the City at no cost any remainder parcels sufficient to construct eligible street improvements up to the center section adjacent to the remainder.
- (b) **Internal/Local Streets.** Dedications for internal/local streets are not eligible for ROW acquisition reimbursement or credits.
- (c) **Non-Grid Streets Proposed by the Developer.** Dedications for non-grid street alignments proposed by the developer are not eligible for credits or reimbursement.
- (d) **Non-Grid Streets Required by the City.** Dedications for non-grid street alignments required by City are eligible for credits and reimbursement as follows:
- Collectors and all other four (4) lane streets: Value of thirty feet (30') on either side of street center line.
  - Six (6) lane streets: Value of forty-five feet (45') on either side of street center line.
- (e) **Vacated Grid Streets.** The value of any grid streets that are proposed to be vacated in conjunction with a development that has a City required non-grid street shall be used as an offset against any credit or reimbursements allowed for a non-grid dedication. For purposes of calculating the amount of credit and/or reimbursement and off-setting value of vacated ROW, the same square foot valuation shall be used.
- (f) **Non-Eligible Street Improvement Off-Site ROW.** The developer shall be eligible for reimbursement from the Street Impact Fee program for off-site ROW acquisitions that would not be necessary to construct Eligible Street Improvements when there is a high probability that the property adjacent to

the ROW will not convert to a higher and better use. At its discretion, the City may file a Notice of Potential Lien against the affected property for reimbursement back to the respective street impact fee fund. If the property adjacent to the ROW has the potential for being developed or redeveloped to a higher and better use, then the City will record a Notice of Potential Lien against the subject parcel and reimburse the developer from any revenues collected as a result of the lien.

## **(10) Appeals Board**

- (a) Street Impact Fee Appeals Board.** The previously formed Board is hereby dissolved. The Public Works Director shall have the full authority to hear, grant or deny appeals filed by developers as was previously delegated to the Board. Developers shall retain the right to appeal the Director's decision to the City Council..
- (b) Right to Appeal.** A developer may file (i) an appeal on a form provided by the Director within fifteen (15) days of the fee being imposed on the developer's entitlement in a final decision issued by the City or (ii) a request for eligibility determination under Section (4)(g) at any time prior to issuance of building permit. The appellant shall submit the basis for his or her appeal or request for eligibility in writing to the Director at least fifteen (15) days prior to the hearing date. Appellants shall be given at least ten (10) days notice of the date of the hearing. Appeals shall be heard within thirty (30) days of the filing of the appeal or request. The Director shall continue a hearing date at least once for thirty (30) days upon request of the appellant.
- (c) Basis of Appeal/Request.** An appeal or request brought under these provisions shall be limited to the following bases:
  - 1. Application of provisions in Section (4)(d), (e), (f) or (h) regarding credits for existing streets and/or payment of UGM fees.
  - 2. Improper calculation of FAR to collect fee on an expansion under Section (5)(a)5.
  - 3. Challenge to the land use attributed to the development by staff pursuant to (3)(a) and (3)(b). To determine the appropriate land use, the Director (or Council) can consider the planned land use, the expected impacts in relation to type of actual land use, classifications and definitions of the City zoning ordinance, the testimony of City planning staff, and any other relevant evidence.
  - 4. Challenge that the development will cause twenty-five (25) percent or less of the impacts identified as the standard that forms the basis under the Nexus Study. The appeal board may limit the fee to the developer's proven impact.
  - 5. Determination of eligibility for exemption under Section (4)(g).

- (d) **Burden of Proof.** To prevail, the appellant carries the burden of proof under the bases in subsection (g).
- (e) **Status of Entitlement on Appeal.** No building permit shall be issued for any development for which a hearing has been requested unless the appellant pays the Street Impact Fees as imposed by the City.
- (f) **Appeal to Council.** The decision of the Director shall be final unless appealed by the appellant to Council within fifteen (15) days of receiving written notice of the decision. Council may approve, reject or modify the Director's decision. Council decision shall be final. Any decision made by the Director or Council shall be based upon substantial evidence in the record and upon these Guidelines, the Fresno Municipal Code, and adopted policies, guidelines and standards of the City.
- (g) **Costs Related to the Appeal.** If an Appeal to Council is made, appellants shall pay a fee for their costs of appeal which may be provided in the Master Fee Schedule. The appeal fee shall be refunded if the Council decides to reduce the street impact fee obligation. Any carrying costs, plan revision, construction, or other project costs that may be required as a result of the appeal shall be the full responsibility of the appellant, and the appellant shall not have the right to seek any restitution from the City.
- (h) **Effect of Decision.** If the appellant's fee obligation is reduced by the Director or Council decision and the appellant previously paid street impact fees, the Director shall reimburse the appellant in the amount of payment they made in excess of the appellant's fee obligation in accordance with the final decision.
- (i) **Imposition of Fee.** For purposes of the right to protest a fee under Government Code Section 66020, the date of imposition of any street impact fee that has been appealed pursuant to this Section (10) shall be the date of a final Council decision on an appeal from the Director.
- (11) **Affordable Housing.** Developers who have developed affordable housing units may be eligible for fee waivers, reductions, credits or reimbursements pursuant to adopted Council policy.