

RESOLUTION NO. 2009-053

Adopted by the Sacramento City Council

January 27, 2009

APPROVING NEXUS STUDY, ESTABLISHING THE AMOUNT OF FEES AND PROVIDING FOR OTHER MATTERS RELATIVE TO MEASURE A TRANSPORTATION DEVELOPMENT IMPACT FEES

BACKGROUND

- A. On July 29, 2004, STA adopted Ordinance No. 04-01, which established the Sacramento Countywide Transportation Mitigation Fee Program ("Measure A Mitigation Fee Program") to be implemented by the County of Sacramento and each city within the county by April 1, 2009. STA Ordinance No 04-01 also included the Sacramento County Transportation Expenditure Plan 2009-2039 ("Measure A Expenditure Plan"), which sets out the allocation of the new Measure A sales taxes and Measure A development impact fees for specified public facilities.
- B. On November 2, 2004, the voters in Sacramento County approved an extension of the one-half of one percent Measure A transportation sales tax ("new Measure A"), to become effective on April 1, 2009, and approved the Measure A Expenditure Plan. STA Ordinance No. 04-01 requires each jurisdiction in the county to adopt the Measure A development impact fees as a condition of receiving the new Measure A sales tax proceeds consistent with the Measure A Mitigation Fee Program.
- C. On June 7, 2006, STA adopted Resolution No. 06-0006, approving the Sacramento Countywide Transportation Mitigation Fee Program Study ("Measure A Nexus Study"), which identified the additional public facilities required by new development and determined the amount of the development impacts fees to be imposed on a countywide basis, so that all new development paid its fair share of the costs of new public facilities needed to serve such development.
- D. On September 26, 2006, by Resolution No. 2006-706, the City Council committed to implement the Measure A Mitigation Fee Program.
- E. The City prepared the Measure A Impact Fee Analysis, dated September, 2008, which identifies the public facilities within the City or benefitting the City to be funded with the Measure A development impact fees in accordance with the Measure A Expenditure Plan.
- F. On January 27, 2009, the City Council adopted Ordinance No. 2009-005, Adding Chapter 18.48 to the Sacramento City Code to Establish Development Impact Fees for Measure A Transportation Improvements for Citywide Benefit District ("Measure A Ordinance"). The Measure A Ordinance: (1) created the authority for imposing the

“Measure A development impact fees” to provide funding for public facilities to benefit new development within the City; (2) created the authority for imposing the “Measure A administration fee” for the cost of collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fee, and (3) enabled the City Council by resolution to set forth the specific amount of these fees in reliance on the Measure A Expenditure Plan, the Measure A Nexus Study and the Measure A Impact Fee Analysis.

- G. The Measure A Expenditure Plan, the Measure A Nexus Study and the Measure A Impact Fee Analysis, along with the studies and reports each may reference or be based upon, in whole or in part, and together with any amendments thereto made after their initial adoption, (i) establish the need, costs and financing of the public facilities needed to mitigate the impacts of and to serve new development within the City, and (ii) represent a reasonable basis to establish fees under the Measure A Ordinance because those studies and reports establish the relationship between new development, the needed public facilities to serve that new development, the estimated cost of those public facilities, and the amount of the Measure A development impact fees.
- H. The foregoing items, and all other additional studies and reports including, without limitation, transportation studies and capital improvement programs presented to the City Council now or in the past for the City Council’s approval of the same or for informational or other purposes, along with the studies, reports and data each may reference or be based upon in whole or in part, and any and all amendments thereto made after their initial adoption, together with staff reports and other matters presented to the City Council by City staff, STA staff or interested parties, whether in writing or orally, constitute the record before the City Council for purpose of adoption of this resolution (“Legislative Record”).
- I. The Measure A Ordinance further provides that the City Council may, by resolution, set forth exemptions and specific limitations which will apply to credits, reimbursements, and deferrals in payment of the Measure A development impact fees and the Measure A administrative fees. However, the STA Agreement on Operating Protocols (“Protocols Agreement”), to be approved by separate resolution, limits the City Council from granting certain exemptions, credits and reimbursements of Measure A development impact fees, which are to be remitted to STA for allocation in accordance with the Measure A Expenditure Plan.
- J. The Measure A Ordinance permits imposition of the Measure A administration fee, and the amount of this fee does not exceed the estimated reasonable costs of the collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fee.
- K. In accordance with the Mitigation Fee Act (Government Code Section 66000 *et seq.*) a public hearing was held on the adoption of the Measure A Ordinance and this resolution, at which written and oral presentations were made as part of a regularly scheduled City Council meeting. The date, time and place of this public hearing was duly noticed in accordance with Government Code Sections 66018 and 66062a, and

notice was mailed to any interested party who requested notice of adoption of new fees. The Measure A Expenditure Plan, the Measure A Nexus Study and the Measure A Impact Fee Analysis were available for public inspection for a period of at least ten (10) days prior to said public hearing. Materials supplementing these studies and reports and all background data referenced therein was made available to interested parties upon request to the City Transportation Director's Office at least ten (10) days prior to the date of said hearing.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Findings.

The City Council finds and declares as follows:

1. All of the provisions set forth above are true and correct and are hereby incorporated herein by reference as findings.
2. By separate actions referenced below, the City Council adopted and approved the following items on the same date that this Resolution was adopted:
 - (a) By Ordinance, adoption of Chapter 18.48 of the Sacramento City Code, establishing development impact fees for public facilities in accordance with the Measure A Expenditure Plan, Measure A Nexus Study and Measure A Impact Fee Analysis within a citywide benefit district, and the Measure A administration fee. This resolution is adopted pursuant to the authority conferred under Chapter 18.48 of the Sacramento City Code.
 - (a) By Resolution, approval of the Protocols Agreement, which provides for the City to remit to the Sacramento Transportation Authority (STA) the Measure A development impact fees. STA will subsequently allocate the Measure A development impact fees collected by the City for construction of the public facilities included in the Measure A Expenditure Plan which are located within or otherwise benefit the City.
3. This Resolution adopts the Measure A Nexus Study and the Measure A Impact Fee Analysis, which were based on the Measure A Expenditure Plan. The Measure A Expenditure Plan is incorporated herein by this reference. The Measure A Nexus Study and the Measure A Impact Fee Analysis, along with the studies and reports each may reference or be based upon in whole or in part, and together with any amendments thereto and any supplemental or implementation actions pursuant thereto made after their initial adoption, establish the need, costs and financing of public facilities arising out of development within the citywide benefit district area, and present a reasonable basis on which to establish the Measure A development impact fees under this Resolution. The Measure A Nexus Study and the Measure A Impact Fee Analysis establishes the reasonable relationship between the need for the public facilities set out in the Measure A Expenditure Plan and the impacts of

the various types of new development contemplated by the City's General Plan, for which the corresponding Measure A development impact fee is to be charged.

4. All new development within the City will result in additional growth that will place burdens on public facilities within the City and will cause the need for new public facilities. Such development will necessitate the need for construction of new and expanded public facilities in order to meet the needs of and to address the impacts caused by new development within the City. The Measure A development impact fees implemented by this Resolution are designed to partially mitigate the transportation impacts caused by new development in the City, and to protect the public's health, safety and general welfare.
5. The Legislative Record, including the Measure A Nexus Study and the Measure A Impact Fee Analysis, establishes a reasonable relationship between the need for the public facilities set out in the Measure A Expenditure Plan and the impacts of the various types of new development which is planned under the City's General Plan. The City Council has considered the effect of the Measure A development impact fees with respect to the City's housing needs and the regional housing needs.
6. The Measure A development impact fee is intended to ensure that the transportation public facilities set forth in the Measure A Expenditure Plan are partially paid for by new development causing the need for the same, and in any event, without requiring expenditures from the City's general fund. It is fair and equitable for landowners developing land within the City to pay their fair share of the costs of such public facilities and for the City to assess said share to the landowners while shielding the City's general fund from liability for same.
7. This Resolution establishes certain fee categories and provides the structure in which the Measure A development impact fees may be imposed, all of which are intended to implement the Measure A Mitigation Fee Program set forth in the Measure A Expenditure Plan. This Resolution authorizes the initial amount of the Measure A development impact fees and the Measure A administrative fee, adopts the index to be used for future adjustment of the Measure A development impact fees, sets forth the category of developments that are exempt from payment of the Measure A development impact fees in accordance with the provisions of the Protocols Agreement, and establishes deferral provisions for payment of the Measure A development impact fees for specified residential developments, all of which affect the time and manner in which the Measure A development impact fees and the Measure A administrative fee are to be paid to the City.
8. The Measure A development impact fees established by this Resolution are based upon the estimated costs of the new public facilities set forth in the Measure A Expenditure Plan which are not fully funded by the new Measure A sales tax proceeds in order to serve and partially address the transportation impacts caused by new development within the City. The cost estimates set forth in the Measure A Expenditure Plan are reasonable costs estimates for

constructing the public facilities set out in that Plan, and the fees expected to be generated by new development will not exceed their fair share cost allocation based on the estimates as set out in that Plan. The Measure A development impact fees shall be subject to adjustment in the future as more precise estimates or actual costs of said public facilities are determined and to account for inflationary construction cost increases.

9. The amount of the fees established under this Resolution, and as may be adjusted over time pursuant to Chapter 18.48 of the Sacramento City Code, is a reasonable approximation of the fair share of the cost of the public facilities set forth in the Measure A Expenditure Plan, and roughly proportionate to the need for such facilities caused by new development within the City. The Measure A development impact fees established by this Resolution relate rationally and do not exceed the reasonable fair share cost of providing those public facilities within and benefitting the City that are required to serve new development projects. The Measure A development impact fees are necessary to finance the transportation public facilities required by new development within the City. The imposition of the Measure A development impact fees on landowners developing their property will insure that they have an obligation to pay a portion of the fair share of the costs of such transportation public facilities.
10. The public facilities that are to be financed by the Measure A development impact fees established by this Resolution are based on an analysis of the land uses set forth in the City's General Plan and such improvements are consistent with the City's General Plan, including all elements thereof.
11. For the purpose of establishing the fees set forth in this Resolution, the Legislative Record before the City Council and the findings herein stated:
 - (a) reasonably identify the purpose of each fee established;
 - (b) reasonably identify the use to which the fee is to be put;
 - (c) establish a reasonable relationship between the use of each fee and the type of development project on which the fee is imposed;
 - (d) establish a reasonable relationship between the need for the public facilities to be financed by the fee established and the type of development project on which the fee is to be imposed;
 - (e) establish that there is a reasonable relationship between the amount of the fee and the cost of the public facilities, or portion of such public facilities, attributable to the development project on which the fees are imposed; and
 - (f) form the basis for the further finding that the imposition of the development impact fee on development projects to finance public facilities is necessary in order for the City to protect and promote the public health, safety and welfare.

12. The City has pending before it, or will soon have pending before it, applications for building permits, subdivision maps and/or applications for residential, commercial and/or industrial development approval which the City must act on. Further, the City heretofore has approved various development projects in the form of tentative map, development agreements, and/or other approvals, which will need the transportation public facilities to be funded by the fees enacted under this Resolution to serve such new development as set out in the Measure A Nexus Study. It is necessary that the provisions of this Resolution apply to these previously approved development projects in order to protect the health, safety and welfare of City residents by the provision of adequate public facilities, to afford landowners certainty with regard to their financial obligations, and to ensure that such development will not create a burden on the interrelated transportation public facilities within the City.

Section 2. Definitions.

Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this Resolution. The definitions in this Section 2 are intended to be consistent with those definitions contained in the Measure A Ordinance. In the event of a conflict between the definitions in this Section 2 and those in the Measure A Ordinance, the Measure A Ordinance shall prevail.

Development means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.

Development project shall have the same meaning as defined by subsection (a) of Government Code Section 66000, as such section may be amended from time to time.

Fee and impact fee and development impact fee means the monetary exaction as defined by subsection (b) of Government Code Section 66000, as such section may be amended from time to time, and shall include, but not be limited to, the fees established pursuant to the Measure A Ordinance.

Government Code means the Government Code of the state of California and any provision thereof cited in this chapter, as such provision exists as of the date of the enactment of the Measure A Ordinance, or as may thereafter be amended or renumbered from time to time.

Health and Safety Code means the Health and Safety Code of the state of California and any provision thereof cited in this Resolution, as such provision exists as of the date of the enactment of this Resolution, or as may thereafter be amended or renumbered from time to time.

Industrial use means a development project that involves manufacturing, transportation, logistics or similar uses and is not a special use.

Low income and very low income housing is as defined in Health and Safety Code Sections 50079.5 and 50105, respectively.

Measure A means Ordinance No. 04-01 adopted by the Sacramento Transportation Authority on July 29, 2004, which established the Sacramento Countywide Transportation Mitigation Fee Program to be implemented by the County of Sacramento and each city within the county by April 1, 2009.

Measure A administration fee means the fee imposed by the City for the cost of collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fee.

Measure A development impact fee means a development impact fee established to provide funding for public facilities to benefit new development within the City.

Measure A Expenditure Plan means the Sacramento County Transportation Expenditure Plan 2009-2039 dated June 10, 2004, as adopted by the Sacramento Transportation Authority under Ordinance No. 04-01, which sets out the allocation of Measure A sales taxes and Measure A development impact fees for specified public facilities.

Measure A Impact Fee Analysis means the study prepared by the City dated September, 2008, which identifies the public facilities within the City or benefitting the City to be funded with Measure A development impact fees in accordance with the Measure A Expenditure Plan.

Measure A Mitigation Fee Program means the Sacramento Countywide Transportation Mitigation Fee Program as approved by the Sacramento Transportation Authority by Ordinance No. 04-01.

Measure A Nexus Study means the Measure A Development Impact Fee Nexus Study dated June 2, 2006, as adopted by the Sacramento Transportation Authority by Resolution No. 06-0006, and as supplemented by the Measure A Impact Fee Analysis.

Multi-family residential use means a development project that uses a single parcel for two or more dwelling units within one or more buildings including, without limitation, duplexes, townhouses, condominiums and apartments.

Office use means a development project that involves business activities associated with professional or administrative services and typically consists of corporate offices, financial institutions, legal and medical offices, personal services or similar uses, and religious centers other than churches. "Office use" also includes any other use that is not a retail, special or industrial use.

Protocols Agreement means the New Measure A Sacramento Countywide Transportation Mitigation Fee Program Agreement on Operating Protocols dated August 2008 with the Sacramento Transportation Authority, as approved by STA on August 28, 2008 by Resolution No 08-0001, and as amended on December 11, 2008.

Public facilities means public improvements, public services and community amenities as defined by subsection (d) of Government Code Section 66000, as such section may be amended from time to time. The term “public facilities” only includes transportation improvements and infrastructure to be designed, constructed, installed and acquired to serve the specified benefit district area, as well as the transportation-related public service and community amenities to serve the specified benefit district area, which improvements and infrastructure are described in the applicable financing plan, expenditure plan and/or nexus study (collectively “plan” or “study”). The total cost of the design, construction, installation and acquisition of the specified public facilities, which are to be financed partially by the development impact fees, is set forth within the plan or study. Where applicable under the plan or study, the term “public facilities” includes the acquisition of land relating to such improvements, infrastructure, public services and community amenities. The term “public facilities” also means a specific public improvement or infrastructure where the context requires a singular meaning.

Retail use means a development project that involves retailing of merchandise, generally without transformation, retail food services, and rendering services incidental to the sale of merchandise at a fixed point of sale and is not a special use.

Senior residential use means any development project that qualifies as housing for older persons pursuant to Government Code Section 12955.9.

Single family residential use means a development project that uses a single parcel for only one residential dwelling unit and includes a development project that involves one primary dwelling and one accessory dwelling on a single lot.

Special Use means the specified types of retail, industrial and institutional uses as defined in Chapter 17 of the City Code (the Zoning Code) for which a separate fee has been specified by STA.

STA means the Sacramento Transportation Authority.

Section 3. Nexus Study.

1. The Measure A Nexus Study, prepared and approved by STA, demonstrated the burden on public facilities that will occur from new development and the benefit for such development of the public facilities included in the Measure A Expenditure Plan. The Measure A Nexus Study, a copy of which is included as an exhibit to the staff report that accompanies this Resolution, is hereby adopted and incorporated herein by this reference.
2. The Measure A Impact Fee Analysis supplements the Measure A Nexus Study by identifying (i) the public facilities included in the Measure A Expenditure Plan that are located in the City and that directly benefit the City, (ii) the amount of Measure A development impact fees and Measure A sales tax revenues programmed by STA to be expended for the public facilities included in the Measure A Expenditure Plan that are located in the City and that directly benefit

the City, and (iii) the amount of the Measure A development impact fee revenues that may be collected from new development projects in the City. The Measure A Impact Fee Analysis, a copy of which is included as an exhibit to the staff report that accompanies this Resolution, is hereby adopted and incorporated herein by this reference.

Section 4. Measure A Development Impact Fees.

The amounts of the Measure A development impact fees established and imposed pursuant to the Measure A Ordinance are hereby established at the levels set out in Measure A Nexus Study and the Protocols Agreement. The applicable Measure A development impact fees by land use category, which the City Council hereby adopts, are attached as Exhibit "A" and incorporated herein by this reference.

For non-residential development projects, the amount of the fee shall be based on the predominate use of each building, which is defined as eighty percent (80%) or more of the total gross building square footage. If no one use comprises eighty percent (80%) or more of the total gross building square footage, then the amount of the fee shall be proportionally determined based on those uses that constitute twenty-five percent (25%) or more of the total gross building square footage.

For mixed residential and non-residential development projects, the amount of the Measure A development impact fee will be proportionally determined based on the number of dwelling units and the amount and type of non-residential gross building square footage.

Section 5. Measure A Administrative Fee.

The amount of the Measure A administrative fee established and imposed pursuant to the Measure A Ordinance is hereby established at the level to off-set the actual reasonable costs for the collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fees. The Measure A administrative fee, which is the same for all land use categories and which the City Council hereby adopts, is included in Exhibit "A," which is attached are incorporated herein.

Section 6. Fee Exemptions.

In accordance with the Measure A Ordinance, the following types of development projects are exempt from payment of the Measure A development impact fees and the Measure A administrative fee:

1. The rehabilitation or reconstruction of any lawful residential structure, including an expansion of an existing dwelling units, that does not create an additional dwelling unit.
2. The rehabilitation or reconstruction of any non-residential structure where there is no net increase in the total gross building square footage.

3. Low income housing development projects.
4. Very low income housing development projects.
5. Development projects that are subject to a development agreement entered into pursuant to Government Code Section 65864 prior to April 1, 2009, unless that agreement expressly provides for payment of the Measure A development impact fee. This exemption would become inapplicable if the term of that development agreement is extended after April 1, 2009.

Section 7. Credits and Reimbursements.

Although authorized by the Measure A Ordinance, there shall be no credits against, and reimbursements of, the Measure A development impact fees imposed under this Resolution if the public improvements included in the Measure A Expenditure Plan are constructed, in whole or in part, by landowner as part of a development project pursuant to the mitigation measures or conditions imposed as part of the approval of such development project, unless such credit and/or reimbursement is authorized by STA.

Section 8. Adjustments.

The Measure A development impact fees shall not be adjusted prior the fiscal year that includes July 1, 2010. The adjustment shall be based on a factor equal to the percentage increase, if any, of the following index: The Construction Cost Index as published by Engineer News Record/McGraw-Hill Construction Weekly for the 20-City Construction Cost Index during the twelve (12) months ending on the preceding March 1st.

Section 9. Construction of Resolution.

The provisions of this Resolution are subject and subordinate to the provisions of the Measure A Ordinance and shall at all times be constructed and applied consistent therewith as the same presently exist or may from time to time hereafter be amended.

Section 10. Effective Date.

This Resolution shall be effective at such time as is provided for in the Measure A Ordinance, which is no sooner than April 1, 2009.

Section 11. Severability.

1. If any section, phrase, sentence, or other portion of this Resolution for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Resolution.
2. If any fee established by this Resolution for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such fee shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the remaining fees established by this Resolution.
3. If any fee established by this Resolution is held or found to be invalid, void, unenforceable or unconstitutional by a court of competent jurisdiction based upon an insufficient nexus to a specific public facility for which the revenue generated from such fee may be expended pursuant to this Resolution, said fee as it relates to such specific public facility shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the fee as it relates to other public facilities.

Section 12. Annual Report and Review of Fees.

No later than one hundred eighty (180) days following the end of the fiscal year that includes June 30, 2010, the City Manager, or his or her designee, shall prepare a report for the City Council in compliance with Government Code Section 66006. The report may include and rely upon the annual report prepared by STA as referenced in the Protocols Agreement.

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Exhibit A Measure A Development Impact Fees

Adopted by the City of Sacramento City Council on January 27, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:


Shirley Concolino, City Clerk

EXHIBIT "A"

Effective as of April 1, 2009

Measure A Development Impact Fees

Single Family Residential	\$1,000 per unit
Senior Single Family Residential	\$ 800 per unit
Multi-Family Residential	\$ 700 per unit
Senior Multi-Family Residential	\$ 600 per unit
Office Use*	\$ 1,200 per 1,000 gross square feet
Retail Use	\$ 3,705 per 1,000 gross square feet
Industrial Use	\$ 800 per 1,000 gross square feet

Special Uses

Church	\$ 932 per 1000 square feet
Golf Course	\$ 833 per acre
Hospital	\$1,678 per 1000 square feet
Hotel/Motel	\$ 580 per sleeping room
Movie Theater	\$1,904 per screen
Service Station	\$1,300 per fueling pump
Supermarket	\$2,110 per 1000 square feet
Warehouse/ Self Storage	\$ 250 per 1000 square feet

* This rate applies if the project does not fall within one of the foregoing retail, special or industrial use categories.

Mixed Use Projects - The amount of the fee shall be based on the predominate use of each building, which is defined as 80% or more of the total gross building square footage. If no one use comprises 80% or more of the total gross building square footage, then the amount of the fee shall be proportionally determined based on those uses that constitute 25% or more of the total gross building square footage. For mixed residential and non-residential development projects, the amount of the fee will be proportionally determined based on the number of dwelling units and the amount and type of non-residential gross building square footage.

Measure A Administrative Fee

Per building permit: 2% of the total Measure A Development Impact Fee

Timing of Payment - The fees established by the Measure A Ordinance and Resolution shall be paid at the time of the issuance of a building permit for a development project. However, for a residential development project under a fee payment contract as specified in Section 66007 of the Government Code: (i) the fee payment may be deferred to the issuance of the

final inspection or certificate of occupancy, and (ii) the fee may be paid on a pro rata basis for each dwelling unit when it receives its final inspection or certificate of occupancy.

Protest – In accordance with the Measure A Ordinance and Government Code Section 66020(d), a protest of the imposition of the Measure A development impact fee must be filed no later than ninety (90) days from the date of approval of the development project or issuance of the building permit, whichever date is earlier.