

**CITY OF BENICIA
ORDINANCE NO. ____**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA, CALIFORNIA REPEALING CHAPTER 5.37 (LIBRARY BOOK FEE) AND REPLACING IT WITH CHAPTER 5.37 (LIBRARY IMPACT FEE); REPEALING CHAPTER 5.38 (TRAFFIC IMPACT MITIGATION) AND REPLACING IT WITH CHAPTER 5.38 (TRANSPORTATION IMPACT MITIGATION FEE); REPEALING SECTION 17.24.030(M)(4) AND ADDING CHAPTER 5.39 (PARKLAND IMPROVEMENT IMPACT FEE); REPEALING SECTION 13.12.050 (WATER SYSTEM CAPACITY FEE) AND REPLACING IT WITH SECTION 13.12.050 (WATER CAPACITY FEE); REPEALING SECTION 13.52.040 (SEWER CAPACITY FEES) AND REPLACING IT WITH SECTION 13.52.040 (SEWER CAPACITY FEE); AND REPEALING SECTION 16.32.040 (PARKLAND DEDICATION) AND REPLACING IT WITH SECTION 16.32.040 (QUIMBY ACT PARKLAND DEDICATION REQUIREMENTS) OF THE BENICIA MUNICIPAL CODE TO ESTABLISH UPDATED IMPACT AND CAPACITY FEES AND QUIMBY ACT DEDICATION REQUIREMENTS AND IN LIEU FEES IMPOSED ON NEW DEVELOPMENT IN THE CITY OF BENICIA.

WHEREAS, the City of Benicia’s (“the City’s”) Municipal Code contains outdated provisions regarding the City’s impact and capacity fees and Quimby Act dedication requirements and in lieu fees; and

WHEREAS, the Mitigation Fee Act, contained in Government Code 66000 et seq., permits the City to impose development impact fees on new development for the purposes of funding the public facilities necessary to serve that new development; and

WHEREAS, the City’s General Plan Goal 2.4 seeks to ensure that new development pays its own way with the objective that any new development be fiscally and financially sound such that the City need not use general funds for private development; and

WHEREAS, Benicia Municipal Code Chapter 5.37 currently sets forth the Library Book Fee with the purpose of imposing a fee upon new residential development projects to mitigate the cost of increased library book needs created by those new projects. The City’s General Plan Goal 2.1 seeks to maintain well developed community facilities, including Library Facilities. New development in the City increases the demand on City library resources. The City must continue to fund Library Facilities within the City to maintain an acceptable level of library services as new development occurs; and

WHEREAS, the City would like to expand the current Library Book Fee into the updated Library Impact Fee. The updated Library Impact Fee will continue to cover the costs associated with books and collections materials necessary to serve new development but will be expanded to also include the costs associated with maintaining the logistical and systemic links with the County Library system and the capital costs associated with the addition of new library space; and

WHEREAS, Benicia Municipal Code Chapter 5.38 currently sets forth the Traffic Impact Mitigation Fee for the purpose of imposing a fee upon new development to mitigate the costs of the increased pressure on the City's Transportation Facilities created by those new developments. The City's General Plan calls for strategies to provide an efficient, reliable, and convenient transit system (General Plan Goal 2.17); improved bicycle routes (General Plan Goal 2.15); and a balanced street system to serve automobiles, pedestrians, bicycles, and transit (General Plan Goal 2.20); and

WHEREAS, in 2013, the state of California adopted SB 743, signaling its commitment to encourage land use and transportation planning decisions and investments that reduce vehicle miles traveled and contribute to the reductions in greenhouse gas emissions required by the California Global Warming Solutions Act of 2006. It is appropriate for new development to pay for all improvements and developments to the transportation network proportionally, in accordance with the demands the new development places on the City's Transportation Facilities. As such, the City desires to expand its current Traffic Impact Mitigation Fee into a Transportation Impact Mitigation Fee, which will fund multimodal infrastructure as well as the traditional traffic improvements that were intended to be funded by the traffic impact mitigation fee; and

WHEREAS, Benicia Municipal Code section 17.24.030(M)(4) currently requires new, non-subdivision, residential development to pay a Parkland Impact Fee to aid in the costs associated with increased demand for community and neighborhood parks and recreational facilities created by that new development. New, non-subdivision, residential development will increase the need for neighborhood and community parks within the City. The City's General Plan Goal 2.32 includes a number of policies to maintain and increase the amount of available park and recreational areas; and

WHEREAS, the City desires to continue to impose a Parkland Improvement Impact Fee ("Parkland Improvement Fee") on new non-subdivision, residential development to fund the costs associated with constructing and expanding park and recreation facilities and to update the fee to bring it in line with current City objectives; and

WHEREAS, the City incurs costs to upgrade and expand the City's water and sewer system facilities in order to protect public health and safety, preserve the environment without damage, and conform to regulatory requirements; and

WHEREAS, Benicia Municipal Code section 13.12.050 currently sets forth the Water System Capacity Fee for the purpose of offsetting the cost of new connections to the City's water system. The City's upgrades and improvements of existing water system facilities effectively increase the City's capacity to reasonably serve new development. The City desires to update Benicia Municipal Code section 13.12.050 in order to bring the fees in line with current City objectives; and

WHEREAS, Benicia Municipal Code Chapter 13.52.040 currently sets forth the Sewer Capacity Fees for the purpose of offsetting the cost of new connections to the City's sewer system. The City's upgrades and improvements of existing sewer facilities effectively increase the City's

capacity to reasonably serve new development. The City desires to update Benicia Municipal Code section 13.52.040 in order to bring the fees in line with current City objectives; and

WHEREAS, California Government Code section 66477 (the “Quimby Act”) allows legislative bodies of cities to require the dedication of land or to impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreation purposes, as a condition of approval of a tentative map or parcel map; and

WHEREAS, the City’s current parkland dedication requirements are contained in Section 16.32.040, “Parkland dedication,” of Chapter 16.32, “Dedication and reservations,” of Title 16 “Subdivisions,” of the Benicia Municipal Code. The City’s General Plan Goal 2.32 includes a number of policies to maintain and increase the amount of available park and recreational areas and to ensure that lands dedicated for parkland are sufficient in size to accommodate the use and facilities proposed; and

WHEREAS, the City’s current parkland dedication requirements need to be revised to conform to changes in state law. City Staff have prepared a new version of the code section to address the aforementioned concerns and to better serve the City’s needs. The City Council desires to amend the City’s existing ordinance regarding the dedication of parkland and the payment of in-lieu fees to ensure that the Parkland Dedication ordinance is consistent with state law; and

WHEREAS, pursuant to Government Code sections 66013, 66016, 66018, and 6062a, the City must adopt the specific fees only after notice and public hearing; and

WHEREAS, pursuant to Government Code section 6062a, a notice of a public hearing on the proposed fee update was published on December 4, 2020 and December 9, 2020 in the *Benicia Herald*, a newspaper of general circulation; and

WHEREAS, pursuant to Government Code sections 66013 and 66016, notice of the time and place of the meeting, including a general explanation of the matters to be considered and a statement that required data is available was provided at least 14 days prior to the meeting to those members of the public who filed a written request with the City; and

WHEREAS, at least ten (10) days prior to the public hearing referenced above, the City made available for public inspection information required under government Code section 66000, *et. seq.*; and

WHEREAS, on December 15, 2020, the City Council held a noticed public hearing to consider the City’s proposed new development fees, at which time all interested persons were given an opportunity to comment.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 5.37 (Library Book Fee) of the Benicia Municipal Code is hereby repealed and replaced with a new Chapter 5.37 which is set forth in Attachment 1, attached hereto, and incorporated herein by reference.

Section 2. Chapter 5.38 (Traffic Impact Mitigation) of the Benicia Municipal Code is hereby repealed and replaced with a new Chapter 5.38 which is set forth in Attachment 2, attached hereto, and incorporated herein by reference.

Section 3. Section 17.24.030(M)(4) (RS, RM and RH Districts – Property and Development Regulations) of the Benicia Municipal Code is hereby repealed. Chapter 5.39 (Parkland Improvement Impact Fee) is added to the Benicia Municipal Code as set forth in Attachment 3, attached hereto, and incorporated herein by reference.

Section 4. Section 13.12.050 (Water System Capacity Fee) of the Benicia Municipal Code is hereby repealed and replaced with a new Section 13.12.050 as set forth in Attachment 4, attached hereto, and incorporated herein by reference.

Section 5. Section 13.52.040 (Sewer Capacity Fees) of the Benicia Municipal Code is hereby repealed and replaced with a new Section 13.52.040 as set forth in Attachment 5, attached hereto, and incorporated herein by reference.

Section 6. Section 16.32.040 (Parkland Dedication) of the Benicia Municipal Code is hereby repealed and replaced with a new Section 16.32.040 as set forth in Attachment 6, attached hereto, and incorporated herein by reference.

Section 7. **Validity.** The above recitations are true and correct, are material to the adoption of this ordinance, and are incorporated herein by reference.

Section 8. **Findings.** The City Council finds that the impact fees, dedication requirements and charges imposed by this Ordinance are necessary and reasonable to implement the goals and objectives of the City's General Plan and are permitted by California state law.

Section 9. **Environmental review.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA"). This action is not a project within the meaning of the CEQA Guidelines Section 15378 and 15061(b)(3) as it has no potential for physical effects on the environment because it involves an adoption of certain fees and/or charges imposed by the City, does not commit the City to any specific project, and said fees and/or charges are applicable to future development projects and/or activities, each of which future projects and/or activities will be fully evaluated in full compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a "project" under CEQA. Therefore, approval of the fees and/or charges is not a "project" for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a "project" under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because

it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

Section 10. **Actions to effectuate and codification.** The City Manager is hereby authorized and directed to take other actions on behalf of City, which are not expressly and specifically reserved for the City Council, to implement and effectuate this ordinance. The City Clerk is directed to codify this ordinance in a manner which best reflects the legislative intent of the City Council in enacting this ordinance. The City Clerk is directed to resolve any numbering conflicts accordingly.

Section 11. **Severability.** Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 12. **Effective date.** This ordinance shall be in full force and effective 30 days after its adoption, and shall be published or posted as required by law.

Section 13. **Publication.** The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Benicia, California and cause the same to be published in accordance with State law.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 15th day of December, 2020, and adopted at a regular meeting of the Council held on the 5th day of January, 2021, by the following vote:

Ayes:

Noes:

Absent:

Steve Young, Mayor

Attest:

Lisa Wolfe, City Clerk

Date

Attachment 1

Chapter 5.37

LIBRARY IMPACT FEE

Sections:

5.37.010	Findings and Intent
5.37.020	Purpose
5.37.030	Definitions
5.37.040	Establishment of a Library Fee
5.37.050	Exemptions
5.37.060	Determination of Required Fees
5.37.070	Payment of Fees
5.37.080	Library Fee Fund and Accounting
5.37.090	Fee Adjustments
5.37.100	Fee Refunds
5.37.110	Fees in Effect When Application Complete

5.37.010 – Findings and Intent.

The City Council hereby finds and declares that:

A. New Development projects in the City have had and will continue to have significant Citywide (other than site specific) impacts on the availability and adequacy of Library Facilities.

B. It is the City's intent and desire (General Plan Goal 2.1) to maintain well developed community facilities, including Library Facilities.

C. The imposition of impact fees is one of the customary methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development in order to promote and protect the public health, safety, and welfare.

D. The provisions of this Ordinance are enacted pursuant to the City of Benicia General Plan and section 66000, *et seq.* of the California Government Code (the "Mitigation Fee Act").

5.37.020 – Purpose.

The purpose of the Library Fee is to fund the Library Facilities reasonably necessary to serve New Development and ensure that New Development pays for its fair share of Library Facilities.

5.37.030 – Definitions.

For the purposes of this chapter, the following terms shall be defined as follows:

- A. "Building Permit" means a "building permit" as defined in BMC Chapter 15.04.
- B. "Certificate of Occupancy" as used in this Chapter has the same meaning as in California Government Code section 66007(e).
- D. "Dwelling Unit" means a "dwelling unit" as defined in BMC Chapter 17.12.
- E. "Library Facilities" means circulation materials, associated technological infrastructure, and capital improvements for library purposes.
- F. "Library Fee" shall mean the mitigation fee imposed on New Development for the purpose of funding Library Facilities reasonably necessary to serve New Development.
- G. "New Development" means all new residential building construction that creates one or more additional, residential Dwelling Units.

5.37.040 – Establishment of a Library Fee.

Except as otherwise provided in this chapter, applicants to develop residential development projects shall pay a Library Fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates the reasonable relationship between the fee's use and the type of development project on which the fee will be imposed and demonstrates the reasonable relationship between the need for Library Facilities and the type of development projects on which the fees will be imposed.

5.37.050 – Exemptions.

- A. The following types of development shall not be required to pay a Library Fee:
 - 1. Alterations, renovations or expansion of an existing residential building or structure where no new Dwelling Units are created.
 - 2. Replacement of existing Dwelling Units on the same lot resulting in no net increase of residential Dwelling Units.
 - 3. The replacement of a destroyed or partially destroyed or damaged building or structure where no additional Dwelling Units are created.
 - 4. Non-residential development.

5.37.060 – Determination of Required Fees.

A. The Public Works Director, or the Director's designee, shall be responsible for determining the fees required by this chapter. This determination shall be made at the time of application for the Building Permit for the New Development.

B. The Library Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record (“ENR”) Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

5.37.070 – Payment of Fees.

A. The fees required by this chapter from a developer shall be paid at the time the City issues a Building Permit for each development project, unless the developer of a non-subdivision residential development enters into an agreement with the City to pay the fees at the time the Certificate of Occupancy is issued, pursuant to Government Code section 66007(a). An agreement to defer payment until the issuance of a Certificate of Occupancy must be executed and recorded before the City will issue a Building Permit for the development project.

B. If New Development changes or intensifies the existing use on the project site, thereby requiring the payment of a new or additional Library Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Public Works Director; provided, however, that, in no event, shall the City refund the fees previously paid.

5.37.080 – Library Fee Fund and Accounting.

A. Library Fee Fund: Fees collected pursuant to this chapter shall be deposited in the Library Fee Fund, and shall be segregated and used and expended primarily to fund Library Facilities reasonably necessary to serve New Development. Any interest accrued by the account shall be used solely for the purpose of funding Library Facilities.

B. Library Fee Accounting: The City shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

5.37.090 – Fee Adjustments.

Any person subject to a fee required by this chapter may apply to the Public Works Director for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant’s residential development project on Library Facilities in the City and the amount of the fee charged.

A. Application. An applicant shall file a written request to adjust fees with the Public Works Director not later than 10 days after the city notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Public Works Director, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus to the impact of the development on the need for Library Facilities within the City and state in detail the factual basis for the request for reduction, adjustment or waiver. If an

applicant desires to receive a Building Permit prior to the completion of the appeal process, applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

B. Decision of the Public Works Director. The Public Works Director shall issue a decision on the application within 30 days after the application is filed with the Public Works Department. The Public Works Director's decision shall state his or her determination regarding the amount of the Library Fee that may reasonably be imposed on the subject New Development and include a brief description of the basis for the Director's decision.

C. Appeal of the Decision of the Public Works Director. Decisions of the Public Works Director may be appealed to the City Manager. Appeals must be filed within 10 days of the Public Works Director's decision. The City Manager shall review the application and evidence presented to the Public Works Director and issue a decision within 15 days. The decision of the City Manager is final and may be appealed or protested pursuant to Government Code section 66020.

5.37.100 – Fee Refunds.

Upon application, fees collected by the City pursuant to this chapter shall be refunded under the following circumstances:

A. Fees collected pursuant to this chapter are erroneously or illegally collected.

B. The Building Permit expires, and no extension has been granted, for the residential development project upon which fees were imposed pursuant to this chapter. An application for refund pursuant to this subsection (B) shall be filed with the Community Development Director no later than 90 days after expiration of the Building Permit. The amount of refund shall be reduced by an amount to cover the cost to the City for processing the refund. (Ord. 92-5 N.S. § 1, 1992).

5.37.110 – Fees in Effect When Application Complete.

The amount of the fees to be paid under this chapter shall be in the amount of the fee in effect at the time the development application is deemed complete.

Attachment 2

Chapter 5.38

Transportation Impact Mitigation Fee

Sections:

5.38.010	Findings and Intent
5.38.020	Purpose
5.38.030	Definitions
5.38.040	Establishment of Transportation Impact Mitigation Fee
5.38.050	Exemptions
5.38.060	Determination of Required Fees
5.38.070	Payment of Fees
5.38.080	Transportation Fee Fund and Accounting
5.38.090	Fee Adjustments
5.38.100	Fee Refunds
5.38.110	Fees in Effect When Application Complete
5.38.120	Fee Credits for Implementation and Administration of Transportation Mitigation Measures and/or Construction of Transportation Facilities
5.38.130	Fee Credits for Improvements Extra to the Project Within Assessment Districts
5.38.140	Development Agreement Projects Exempt

5.38.010 – Findings and Intent.

The City Council hereby finds and declares that:

A. New Development projects in the City have had and will continue to have significant Citywide (other than site specific) impacts on the availability and adequacy of Transportation Facilities.

B. It is the City's intent and desire (General Plan Goals 2.15, 2.17, 2.20) to provide an efficient, reliable and convenient transit system, improved bicycle routes, and a balanced street system to serve automobiles, pedestrians, bicycles, and transit.

C. The imposition of impact fees is one of the customary methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development in order to promote and protect the public health, safety, and welfare.

D. The provisions of this Ordinance are enacted pursuant to the City of Benicia General Plan and section 66000, *et seq.* of the California Government Code (the "Mitigation Fee Act").

5.38.020 – Purpose.

The purpose of the Transportation Fee is to fund the planning, design, development, and construction of Transportation Facilities reasonably necessary to serve New Development and ensure that New Development pays for its fair share of Transportation Facilities.

5.38.030 – Definitions.

For the purposes of this chapter, the following terms shall be defined as follows:

- A. “Building Permit” means a “building permit” as defined in Chapter 15.04 BMC.
- B. “Certificate of Occupancy” as used in this Chapter, has the same meaning as in California Government Code section 66007(e).
- C. “Dwelling Unit” means a “dwelling unit” as defined in Chapter 17.12 BMC.
- D. “Governmental or public facilities” shall mean publicly owned buildings and structures used for the purposes of conducting city, county, state or federal government business. Such facilities shall include, but not be limited to, city halls, police and fire stations, offices, equipment yards, sanitation facilities, schools, recreation centers, and similar facilities. Private commercial development projects leasing publicly owned land shall not be considered governmental or public facilities.
- E. “Transportation Facilities” shall mean transportation system improvement projects that require physical alteration of the transportation system. Examples of Transportation Facilities include, but are not limited to, roadway improvements, signalization improvements, other public right-of-way improvements such as bus shelters, and multimodal improvements, such as bikeways and sidewalks.
- F. “Transportation Fee” shall mean the Traffic Impact Mitigation Fee imposed on New Development for the purpose of funding Transportation Facilities reasonably necessary to serve New Development.
- G. “New Development” shall mean all new building construction, conversion to a use that intensifies existing transportation demands, and any other new construction that creates additional transportation impacts.

5.38.040 – Establishment of Transportation Impact Mitigation Fee.

Except as otherwise provided in this chapter, developers of New Development shall pay a Transportation Fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates the reasonable relationship between the fee’s use and the type of development project on which the fee will be imposed and demonstrates the reasonable relationship between the need for Transportation Facilities and the type of development projects on which the fees will be imposed.

5.38.050 – Exemptions.

A. The following developments shall be exempt from the requirements of this chapter:

1. Governmental or public facilities.
2. Developments on real property owned by a government transportation agency which are used exclusively for public transportation purposes.
3. Public elementary schools and secondary schools.
4. Private schools which meet the requirements contained in California Education Code Section 48222, or its successor, so that attendance at such schools complies with California compulsory education requirements.
5. Alterations, renovations or expansion of an existing residential building or structure where no new Dwelling Units or new non-residential space is created.
6. Replacement of existing Dwelling Units on the same lot resulting in no net increase of residential Dwelling Units and no new non-residential space.
7. The replacement of a destroyed or partially destroyed or damaged building or structure where no additional Dwelling Units or new non-residential space is created.

5.38.060 – Determination of Required Fees.

- A. The Public Works Director, or the Director's designee, shall be responsible for determining the fees required by this chapter. This determination shall be made at the time of application for the Building Permit or at the time of approval for a change in use.
- B. The Transportation Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

5.38.070 – Payment of Fees.

- A. The fees required by this chapter from a developer shall be paid at the time the City issues a Building Permit for each development project, unless the developer of a non-subdivision residential development requests to enter into an agreement with the City to pay the fees at the time the Certificate of Occupancy is issued, pursuant to California Government Code section 66007(c). An agreement to defer payment until the issuance of a Certificate of Occupancy must be executed and recorded before the City will issue a Building Permit for the development project.

B. If New Development changes or intensifies the existing use on the project site, thereby requiring the payment of a new or additional Transportation Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Public Works Director; provided, however, that, in no event shall the City refund the fees previously paid.

C. A developer required by this chapter to pay a Transportation Fee may apply for a fee deferral. The application shall be reviewed and considered by the Public Works Director and shall be granted if the applicant's project meets the criteria for fee deferrals established by City Council resolution.

5.38.080 – Transportation Fee Fund and Accounting.

A. Transportation Fee Fund: Fees collected pursuant to this chapter shall be deposited in the Transportation Fee Fund, and shall be segregated and used and expended primarily to fund planning, design, development, and construction of Transportation Facilities reasonably necessary to serve New Development. Any interest accrued by the account shall be used solely for the purpose of funding Transportation Facilities.

B. Transportation Fee Accounting: The City shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

5.38.090 – Fee Adjustments.

Any person subject to a fee required by this chapter may apply to the Public Works Director for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's residential development project on Transportation Facilities in the City and the amount of the fee charged.

A. Application. An applicant shall file a written request to adjust fees with the Public Works Director not later than 10 days after the City notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Public Works Director, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus with the impact of the development on the need for Transportation Facilities within the City and state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires to receive a Building Permit prior to the completion of the appeal process, applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

B. Decision of the Public Works Director. The Public Works Director shall issue a decision on the application within 30 days after the application is filed with the Public Works Department. The Public Works Director's decision shall state his or her determination regarding the amount of the Transportation Fee that may

reasonably be imposed on the New Development and include a brief description of the basis for the Director's decision.

C. Appeal of the Decision of the Public Works Director. Decisions of the Public Works Director may be appealed to the City Manager. Appeals must be filed within 10 days of the Public Works Director's decision. The City Manager shall review the application and evidence presented to the Public Works Director and issue a decision within 15 days. The decision of the City Manager is final and may be appealed or protested pursuant to Government Code section 66020.

5.38.100– Fee Refunds.

Upon application, fees collected by the City pursuant to this chapter shall be refunded under the following circumstances:

A. Fees collected pursuant to this chapter are erroneously or illegally collected.

B. The Building Permit expires, and no extension has been granted, for the development project upon which fees were imposed pursuant to this chapter. An application for refund pursuant to this subsection (B) shall be filed with the Community Development Director no later than 90 days after expiration of the Building Permit. The amount of refund shall be reduced by an amount to cover the cost to the City for processing the refund.

5.38.110 – Fees in Effect When Application Complete.

The amount of the fees to be paid under this chapter shall be in the amount of the fee in effect at the time the development application is deemed complete.

5.38.120 – Fee Credits for Implementation of Transportation Mitigation Measures and/or Construction of Transportation Facilities.

A developer shall be entitled to a reduction in the amount of the fees required by this chapter, in an amount to be determined by the Public Works Director, if that developer implements transportation mitigation measures or constructs Transportation Facilities. The Public Works Director's determination shall be based upon the actual costs reasonably incurred in constructing the Transportation Facilities.

5.38.130 – Fee Credits for Improvements Extra to the Project or Within Assessment Districts.

A developer may be entitled to a reduction in the amount of the transportation fees required by this chapter, in an amount to be determined by the Public Works Director, if that developer's project was required to construct specific Transportation Facilities, which are extra to the project, or the development project is located within the boundaries of an assessment or other special district in which Transportation Facilities were constructed (or are intended to be constructed) with the use of funds derived by virtue of said district and that developer's property for which

development is proposed has been financially encumbered or otherwise burdened to pay for all or a portion of the Transportation Facilities paid for or to be paid for by assessments levied by the district. The Public Works Director's determination of the amount of reduction required pursuant to this section shall be based upon the developer's actual costs reasonably incurred for the construction of the Transportation Facilities.

5.38.140 – Development Agreement Projects Exempt.

Any development project which is approved under a development agreement adopted pursuant to Government Code Section 65864 et seq. or which is undertaken pursuant to a specific plan shall be exempt from the fees established by this chapter; provided, that the development agreement and/or specific plan requires the developer to construct, or pay for the construction of, Transportation Facilities, the value of which equals or exceeds the fee that otherwise would have been required of the developer pursuant to this chapter.

Attachment 3

Chapter 5.39

PARKLAND IMPROVEMENT IMPACT FEE

Sections:

5.39.010	Findings and Intent
5.39.020	Purpose
5.39.030	Definitions
5.39.040	Establishment of a Parkland Improvement Impact Fee
5.39.050	Exemptions
5.39.060	Determination of Required Fees
5.39.070	Payment of Fees
5.39.080	Parkland Improvement Fee Fund and Accounting
5.39.090	Fee Adjustments
5.39.100	Fee Refunds
5.39.110	Fees in Effect When Application Complete

5.39.010 – Findings and Intent.

The City Council hereby finds and declares that:

A. New residential Dwelling Units increase demand on existing Park Facilities and create the need for expanded or new facilities to serve New Development. The purpose of this Chapter is to enable the collection of mitigation fees to be used for the purpose of developing new or expanding existing Park Facilities.

B. It is the City's intent and desire to require that new, non-subdivided residential developments contribute their fair share toward the purchase, development and/or improvement of Park Facilities.

C. The imposition of impact fees is one of the customary methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development in order to promote and protect the public health, safety and welfare.

D. The provisions of this Ordinance are enacted pursuant to the City of Benicia General Plan and sections 66000, *et seq.* of the California Government Code (the "Mitigation Fee Act").

5.39.020 – Purpose.

The purpose of the Parkland Improvement Impact Fee is to fund the creation and improvement of Park Facilities, including, but not limited to, the planning, designing, developing, and

improving of existing and newly acquired Park Facilities reasonably necessary to serve New Development and ensure that New Development pays for its fair share of park and recreational facilities.

5.39.030 – Definitions.

For the purposes of this chapter, the following terms shall be defined as follows:

- A. “Building Permit” means a “building permit” as defined in Chapter 15.04 BMC.
- B. “Certificate of Occupancy” as used in this Chapter, has the same meaning as in California Government Code section 66007(e).
- C. “Dwelling Unit” means a “dwelling unit” as defined in BMC Chapter 17.12.
- D. “Park Facilities” shall mean any public improvements deemed necessary by the City to develop, improve or expand land and facilities for park and recreational purposes. Such improvements may include, but are not limited to: grading; landscaped areas for active and passive recreational use, trails and sports fields; irrigation and drainage systems; lawn, shrubs and trees; facilities for recreational community gardening; walkways; bicycle facilities and park lighting; playground or other recreational equipment; picnic facilities; community center or other buildings, swimming pools; volleyball, basketball, tennis, racquetball and other courts; vehicle driveways and parking areas and any other facilities which may hereafter be authorized by state law or approved by the City.
- E. “Parkland Improvement Fee” shall mean the mitigation fee imposed on New Development for the purpose of funding park and recreational facilities reasonably necessary to serve New Development.
- F. “New Development” shall mean all new residential building construction that creates one or more additional, non-subdivision, residential Dwelling Units.

5.39.040 – Establishment of a Parkland Improvement Impact Fee.

Except as otherwise provided in this chapter, developers of non-subdivision, residential development projects shall pay a Parkland Improvement Fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates the reasonable relationship between the fee’s use and the type of development project on which the fee will be imposed and demonstrates the reasonable relationship between the need for Park Facilities and the type of development projects on which the fee will be imposed.

5.39.050 – Exemptions.

The following types of development shall not be required to pay a Parkland Improvement Fee:

- A. Alterations, renovations or expansion of an existing residential building or structure where no new Dwelling Units are created.
- B. Replacement of existing Dwelling Units on the same lot resulting in no net increase of residential Dwelling Units.
- C. The replacement of a destroyed or partially destroyed or damaged building or structure where no additional Dwelling Units are created.
- D. Non-residential development.

5.39.060 – Determination of Required Fees.

- A. The Public Works Director, or the Director’s designee, shall be responsible for determining the fees required by this chapter. This determination shall be made at the time of application for the Building Permit for the Dwelling Unit.
- B. The Parkland Improvement Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record (“ENR”) Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

5.39.070 – Payment of Fees.

- A. The fees required by this chapter from a developer shall be paid at the time the City issues a Building Permit for each development project, unless the developer of a non-subdivision residential development enters into an agreement with the City to pay the fees at the time the Certificate of Occupancy is issued, pursuant to Government Code section 66007(c). An agreement to defer payment until the issuance of a Certificate of Occupancy must be executed and recorded before the City will issue a Building Permit for the development project.
- B. If New Development changes or intensifies the existing use on the project site, thereby requiring the payment of a new or additional Parkland Improvement Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Public Works Director; provided, however, that, in no event shall the City refund the fees previously paid.

5.39.080 – Parkland Improvement Fee Fund and Accounting.

- A. Parkland Improvement Fee Fund: Fees collected pursuant to this chapter shall be deposited in the Parkland Improvement Fee Fund, and shall be segregated and used and expended for the creation of Park Facilities reasonably necessary to serve New Development. Any interest accrued by the account shall be used solely for the purpose of funding Park Facilities.

B. Parkland Improvement Fee Accounting: The City shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

5.39.090 – Fee Adjustments.

Any person subject to a fee required by this chapter may apply to the Public Works Director for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's residential development project on Park Facilities in the City and the amount of the fee charged.

A. Application. An applicant shall file a written request to adjust fees with the Public Works Director not later than 10 days after the City notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Public Works Director, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus with the impact of the development on the need for Park Facilities within the City and state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires to receive a Building Permit prior to the completion of the appeal process, applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

B. Decision of the Public Works Director. The Public Works Director shall issue a decision on the application within 30 days after the application is filed with the Public Works Department. The Public Works Director's decision shall state his or her determination regarding the amount of the Parkland Improvement Fee that may reasonably be imposed on the New Development and include a brief description of the basis for the Director's decision.

C. Appeal of the Decision of the Public Works Director. Decisions of the Public Works Director may be appealed to the City Manager. Appeals must be filed within 10 days of the Public Works Director's decision. The City Manager shall review the application and evidence presented to the Public Works Director and issue a decision within 15 days. The decision of the City Manager is final and may be appealed or protested pursuant to Government Code section 66020.

5.39.100 – Fee Refunds.

Upon application, fees collected by the City pursuant to this chapter shall be refunded under the following circumstances:

A. Fees collected pursuant to this chapter are erroneously or illegally collected.

B. The Building Permit expires, and no extension has been granted, for the development project upon which fees were imposed pursuant to this chapter. An application for refund pursuant to this subsection (B) shall be filed with the Community Development Director no later than 90 days after expiration of the Building Permit. The amount of refund shall be reduced by an amount to cover the cost to the City for processing the refund.

5.39.110 – Fees in Effect When Application Complete.

The amount of the fees to be paid under this chapter shall be in the amount of the fee in effect at the time the development application is deemed complete.

Attachment 4

Section 13.12.050

Water Capacity Fee

13.12.050 – Water Capacity Fee.

An applicant for new or expanded water service shall pay a water capacity charge as follows:

A. Findings and Intent. The City Council hereby finds and declares that:

1. New connections to the City's water system cost the City resources that, without the collection of capacity fees, are funded by the City for the benefit of solely the owner of the new connection. The purpose of this Section is to recover the costs of current and future facilities and assets needed to provide water capacity to new or expanded service connections to the City's water system.
2. It is the City's intent and desire (General Plan: Policy 2.36) to recover the costs of new or expanded water service connections.
3. The imposition of capacity fees is one of the customary methods of ensuring that new connections to the City's utility systems bear a proportionate cost of the resources necessary to provide capacity for the new connection.
4. The provisions of this Ordinance are enacted pursuant to the City of Benicia General Plan and section 66013 of the California Government Code.

B. Purpose of Water Capacity Fees. The purpose of the water capacity fees is to fund a proportionate share of the costs of existing and future water system facilities and assets that are reasonably necessary to provide water capacity for New Development. For the purpose of this section, "New Development" means all new building construction, conversion to a new use, or additional use within an existing building that creates a need for additional water capacity.

C. Establishment of Water Capacity Fee. Except as otherwise provided in this chapter, persons applying for new or expanded water service shall pay a water capacity fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates that the fees do not exceed the estimated reasonable cost of providing the service for which the fees are imposed.

D. Increased Water Service. An applicant for increased water service capacity over and above the existing service at a property shall pay a capacity fee in an amount set by City Council resolution.

E. Determination of Required Fees.

1. The Public Works Director, or the Director's designee, shall be responsible for determining the fees required by this section. This determination shall be made at the time of application for increased water service.

2. The water capacity fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

F. Payment of Fee.

1. Capacity charges for new or increased water service shall be paid at the time of application for such new or increased service.

2. The person required by this chapter to pay a water capacity fee may apply for a fee deferral. The application shall be reviewed and considered by the Public Works Director, and shall be granted if the applicant's project meets the criteria for fee deferral established by City Council resolution.

3. If New Development changes or intensifies the existing use on the project site, thereby requiring the payment of a new or additional water capacity fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Public Works Director; provided, however, that, in no event shall the City refund the fees previously paid.

G. Water Capacity Fee Fund. The revenues from the water capacity fee shall be deposited in a segregated water capacity fee fund for the purpose of funding public facilities reasonably necessary to provide water capacity service to new or expanded connections to the City's water system.

H. Fee Adjustments

1. Any person subject to a fee required by this chapter may apply to the Public Works Director for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's residential development project on water capacity in the City's water system and the amount of the fee charged.

- a. Application. An applicant shall file a written request to adjust fees with the Public Works Director not later than 10 days after the City notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Public Works Director, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this section and imposed by implementing resolution bears

no reasonable relationship or nexus with the impact of the development on the need for water capacity in the City's water system and state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires to obtain the new or increased water connection prior to completion of the appeal process, the applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

b. Decision of the Public Works Director. The Public Works Director shall issue a decision on the application within 30 days after the application is filed with the Public Works Department. The Public Works Director's decision shall state his or her determination regarding the amount of the water capacity fee that may reasonably be imposed on the new development and include a brief description of the basis for the Director's decision.

c. Appeal of the Decision of the Public Works Director. Decisions of the Public Works Director may be appealed to the City Manager. Appeals must be filed within 10 days of the Public Works Director's decision. The City Manager shall review the application and evidence presented to the Public Works Director and issue a decision within 15 days.

I. Fee Credits for Improvements Extra to the Project. An applicant for additional water service may be entitled to a reduction in the amount of the water capacity fees required by this chapter, in an amount to be determined by the Public Works Director, if that person's development project was required to construct specific water system improvements which are extra to the project. The Public Works Director's determination of the amount of reduction required pursuant to this section shall be based upon the developer's actual costs reasonably incurred for the construction of the water improvements.

Attachment 5

Section 13.52.040

Sewer Capacity Fee

13.52.40 – Sewer Capacity Fee.

An applicant for sewerage service shall pay a sewer capacity fee as follows:

A. Findings and Intent. The City Council hereby finds and declares that:

1. New connections to the City's sewer system cost the City resources that, without the collection of capacity fees, are funded by the City for the benefit of solely the owner of the new connection. The purpose of this Section is to recover the costs of current and future facilities and assets needed to provide sewer capacity to new or expanded service connections to the City's sewer system.
2. It is the City's intent and desire (General Plan: Policy 2.40) to recover the costs of new or expanded sewer service connections.
3. The imposition of capacity fees is one of the customary methods of ensuring that new connections to the City's utility systems bear a proportionate cost of the resources necessary to accommodate the new connection.
4. The provisions of this Ordinance are enacted pursuant to the City of Benicia General Plan and sections 54999, *et seq.* of the California Government Code.

B. Purpose of Fee. The purpose of the sewer capacity fees is to fund a proportionate share of the costs of existing and future sewer system facilities and assets that are reasonably necessary to provide sewer capacity to New Development. For the purpose of this section, "New Development" means all new building construction, conversion to a new use, or additional use within an existing building that creates a need for additional sewer capacity.

C. Establishment of Sewer Capacity Fee. Except as otherwise provided in this chapter, persons applying for new or expanded sewer service shall pay a sewer capacity fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates that the fees do not exceed the estimated reasonable cost of providing the service for which the fees are imposed.

D. Increased Sewer Service. An applicant for increased sewer service capacity over and above the existing service at a property shall pay a capacity fee in the amount set by City Council resolution.

E. Determination of Required Fees.

1. The Public Works Director, or the Director's designee, shall be responsible for determining the fees required by this section. This determination shall be made at the time of application for increased sewer service.

2. The sewer capacity fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

F. Payment of Fee.

1. Capacity charges for new or increased sewer service shall be paid at the time of application for such new or increased service.

2. An applicant for new or increased sewer service required to pay a capacity charge by this chapter may apply for a deferral of the capacity charge. The application shall be reviewed and considered by the Public Works Director, and shall be granted if the applicant's project meets the criteria for fee deferrals established by City Council resolution.

3. If New Development changes or intensifies the existing use on the project site, thereby requiring the payment of a new or additional sewer capacity fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Public Works Director; provided, however, that, in no event shall the City refund the fees previously paid.

G. Sewer Capacity Fee Fund. The revenues from the sewer capacity fee shall be deposited in a segregated sewer capacity fee fund for the purpose of funding public facilities reasonably necessary to provide sewer capacity service to new or expanded connections to the City's sewer system.

H. Fee Adjustments.

1. Any person subject to a fee required by this chapter may apply to the Public Works Director for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's residential development project on sewer capacity in the City's sewer system and the amount of the fee charged or the type of facilities to be provided.

- a. Application. An applicant shall file a written request to adjust fees with the Public Works Director not later than 10 days after the City notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Public Works Director, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears

no reasonable relationship or nexus with the impact of the development on sewer capacity in the City's sewer system and state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires to obtain the new or increased sewer connection prior to the completion of the appeal process, the applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

b. Decision of the Public Works Director. The Public Works Director shall issue a decision on the application within 30 days after the application is filed with the Public Works Department. The Public Works Director's decision shall state his or her determination regarding the amount of the sewer capacity fee that may reasonably be imposed on the new development and include a brief description of the basis for the Director's decision.

c. Appeal of the Decision of the Public Works Director. Decisions of the Public Works Director may be appealed to the City Manager. Appeals must be filed within 10 days of the Public Works Director's decision. The City Manager shall review the application and evidence presented to the Public Works Director and issue a decision within 15 days.

I. Fee Credits for Improvements Extra to the Project. An applicant for additional sewer service may be entitled to a reduction in the amount of the sewer capacity fees required by this chapter, in an amount to be determined by the Public Works Director, if that person's development project was required to construct specific sewer system improvements which are extra to the project. The Public Works Director's determination of the amount of reduction required pursuant to this section shall be based upon the developer's actual costs reasonably incurred for the construction of the sewer improvements.

Attachment 6

Chapter 16.32.040

QUIMBY ACT PARKLAND DEDICATION REQUIREMENTS

16.32.040 – Quimby Act Parkland Dedication Requirements.

- A. Findings and Intent. The City Council hereby finds and declares that:
1. New residential dwelling units increase demand on existing park facilities and create the need for expanded park facilities to serve the new development. The purpose of this Section is to enable the dedication of land for park space and/or the imposition of fees for park facilities to be used for the purpose of developing new park facilities following new subdivision development.
 2. It is the City's intent and desire (General Plan: policy 2.32) to expand the City's park system to accommodate future community needs, in part by ensuring that lands dedicated for parkland are of sufficient size to accommodate the uses and facilities proposed (General Plan: policy 2.32.A).
 3. The imposition of a dedication or in-lieu fee requirement, pursuant to Government Code Section 66477 ("the Quimby Act"), is a customary method of ensuring that park facilities are developed and created to match the pressures imposed by new subdivision development.
 4. The provisions of this Ordinance are enacted pursuant to the City of Benicia General Plan and the Quimby Act.
- B. Requirements. As a condition of approval of a tentative map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or a combination of both, at the option of the City, for park or recreational purposes at the time and according to the standards and formula contained in this chapter. Parkland dedication requirements and in lieu fees required under this section shall be established by the City Council by resolution.
- C. Standards and Formula for Dedication of Land.
1. Where a park or recreation facility is designated in the open space, parks and public facilities element of the general plan to be located in whole or part within a proposed subdivision, the subdivider is required to dedicate usable land for a local park. All parkland shall be dedicated free and clear of all liens and encumbrances to the City and shall conform to the provisions of this section.
 2. The amount of land to be dedicated shall be based upon the residential density, which shall be determined on the basis of the approved or conditionally approved

tentative map or parcel map and the average number of persons per household. Unless there is evidence to the contrary, the average number of persons per household units in a structure is the same as that disclosed by the most recent available federal census or a census taken pursuant to Government Code Section 40200 et seq. The dedication of land shall not exceed the proportionate amount necessary to provide three acres of park area per 1,000 persons residing in the subdivision, unless the amount of existing neighborhood and community park area exceeds that limit, in which case, the City Council may adopt a higher amount, not to exceed five acres per 1,000 persons residing in the subdivision. This acreage shall be in net acres and shall not include any public rights-of-way within or adjacent to the proposed park site.

For the purpose of this section, “Dwelling Unit” means a “dwelling unit” as defined in BMC Chapter 17.12.

3. The subdivider shall, without credit, provide:

- a. Full street improvements and utility connections, including curbs, gutters, street paving, traffic control devices, street trees, and sidewalks adjacent to land which is dedicated pursuant to this section; and
- b. Fencing along the property line of the subdivision contiguous to the dedicated land as approved by the Public Works Director.

D. Formula for Fees in Lieu of Land Dedication.

1. If there is no park or recreation facility designated in the general plan within a proposed subdivision, or the dedication of land pursuant to subsection C of this section is not feasible or compatible with the general plan, or the City has previously acquired the necessary park property, or the City Council determines that a fee is more appropriate, the subdivider shall pay a fee instead of land dedication.

2. The amount of this fee shall be equal to the fair market value of the land prescribed for dedication in subsection (C).

E. Fees in Lieu of Land – 50 Parcels or Fewer. If the proposed subdivision contains fifty parcels or less, the City may only require the payment of fees under this section and may not require the dedication of land. However, this section does not preclude the dedication and acceptance of land for park and recreation purposes in a subdivision of fifty parcels or less if the subdivider proposes dedication voluntarily, and the land is acceptable to the City.

F. If the proposed subdivision contains more than 50 parcels, the City Council may approve the combination of a fee payment and land dedication when:

1. Only a portion of a proposed park falls within a subdivision. That portion shall be dedicated for park purposes, and a fee is required for any additional amount of land that would otherwise be required for dedication; or
2. A major part of the park or recreation site has already been acquired, and only a small portion of land is needed from the subdivision to complete the site. The needed portion shall be acquired by dedication and a fee required for any additional amount of land that would otherwise be required for dedication.

G. Determination of Land or Fee. Whether the City accepts land dedication, or elects to require the payment of a fee in lieu of, or a combination of both, shall be determined by consideration of the following:

1. Policies, standards and principles for park and recreation facilities in the general plan;
2. Topography, geology, access and location of land in the subdivision available for dedication;
3. Size and shape of the subdivision and land available for dedication;
4. Feasibility of dedication;
5. Compatibility of dedication with the general plan;
6. Availability of previously acquired park property.
7. The factors set forth in subsections (E) and (F) of this section.

The determination by the City as to whether land shall be dedicated, or whether a fee shall be charged, or a combination, shall be final and conclusive.

H. Credit for Park Improvements. If the subdivider provides park and recreational improvements to the dedicated land, the value of the improvements together with any equipment located thereon shall be a credit against the payment of fees or dedication of land required by this section. The value shall be determined by the Public Works Director and that determination shall be final.

I. Credit for Private Open Space. Common interest developments, as defined in section 4100 of the Civil Code, shall be eligible to receive a credit, as determined by the legislative body, against the amount of land required to be dedicated or the amount of the fee imposed for the value of private open space within the development which is usable for recreational purposes.

J. Procedure.

1. At the time of the approval or conditional approval of the tentative map, the City Council shall determine, after a report and recommendation from the Parks and Community Services Department, whether land, in-lieu fees, or a combination of land and fees shall be dedicated and/or paid by the subdivider.
2. The City Council may approve, modify, or disapprove the recommendation of the Parks and Community Services Department.
3. The recommendation of the Parks and Community Services Department shall include the following:
 - a. The amount of land required; or
 - b. That a fee be charged in lieu of land; or
 - c. That a combination of land and a fee be required; and
 - d. The location of the parkland and, where appropriate, the siting and conceptual design of the park facilities appurtenant thereto, to be dedicated or used in lieu of fees; and
 - e. The approximate time when the development of the park or recreation facility shall commence.
4. Open space covenants for private park or recreational facilities shall be submitted to the City prior to the approval of the final map or parcel map and, if approved, shall be recorded concurrently with the final map or parcel map.

K. Timing of Dedication and/or Payment. At the time of the recording of the final map or parcel map, the subdivider shall dedicate the land and/or pay the fees as determined by the City. At the discretion of the City, fees may be paid prior to the issuance of any building permit for any structure in the subdivision.

L. Parkland Dedication In Lieu Fee Fund. The revenues from fees collected by the City in lieu of land dedication shall be deposited in a segregated land in lieu fee fund for park or recreational purposes, pursuant to Government Code section 66477(a)(3).

M. Schedule of Use. At the time of the approval of the final map or parcel map, the City shall develop a schedule specifying how, when and where it will use the land or fees, or both, to develop or rehabilitate park or recreational facilities to serve the residents of the subdivision.

N. Not Applicable to Certain Subdivisions. The provisions of this section do not apply to:

1. Subdivisions containing less than five parcels and not used for residential purposes. However, the City shall place the following condition on the parcel map:

"If, within four years, a building permit is requested for construction of a residential structure on one or more of the parcels, the owner of each such parcel is required to pay a parkland dedication in lieu fee in the amount set forth by City Council resolution before the permit is issued."

2. Commercial or industrial subdivisions or condominium projects or stock cooperatives that consist of the subdivision of airspace in an existing apartment building which is more than five years old when no New Dwelling Units are added.

For the purposes of this Chapter, "New Dwelling Unit" does not include Dwelling Units lawfully in place prior to the date on which the tentative map is approved.