



Amador County Board of Supervisors

810 Court Street
Jackson, CA 95642

Meeting: 02/13/07

DOC ID: 1271 A

ORDINANCE 2007-1662

Recreation Impact Fees: Ordinance Adding to the Amador County Code Chapter 7.90 Relative to Park and Recreation Impact Fees. Reading of This Ordinance Was Waived on February 6, 2007.

PARK AND RECREATION IMPACT FEE ORDINANCE

The Board of Supervisors of the County of Amador ordains as follows:

SECTION I. Chapter 7.90 is hereby added to the Amador County Code as follows.

Chapter 7.90

PARK AND RECREATION IMPACT FEES

7.90.010 Findings.

A. In order to implement the goals and objectives of the Amador County Park and Recreation Master Plan and to mitigate park impacts caused by new residential development projects within the unincorporated portions of Amador County, a development mitigation fee for parks is necessary. The fee is needed to finance park and recreation facilities necessary to serve new residential development projects and to assure that new residential development projects pay their fair share for these facilities.

B. Title 7, Chapter 5, Section 66000 et seq. of the California Government Code provides that development mitigation fees for parks may be enacted and imposed on development projects. The board of supervisors finds and determines that:

1. New residential development projects cause the need for construction, acquisition, expansion and/or improvement of park and recreation facilities within the unincorporated areas of Amador County.

2. Funds for construction, acquisition, expansion and/or improvement of park and recreation facilities are not available to accommodate the needs caused by new residential development projects which will result in inadequate park and recreation facilities within the unincorporated areas of Amador County.

C. The board of supervisors finds that the public health, safety, and general welfare will be promoted by the adoption of development mitigation fees for parks for the construction, acquisition, expansion and/or improvement of park and recreation facilities, the need for which is caused by new residential development projects.



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D. Pursuant to Government Code Section 65913.2, the board of supervisors has considered the effects of the fees with respect to the county's housing need as established in the housing element of the general plan.

E. Pursuant to Title 14 California Code of Regulations, Sections 15061 and 15273(b)(4), the board of supervisors finds that this ordinance is exempt from the California Environmental Quality Act. (Ord.)

7.90.020 Definitions.

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

A. "Development" or "development project" means any residential project undertaken for the purpose of development which involves the issuance of an Amador County building permit for new construction. The term "development" or "development project" shall also include the erection of manufactured buildings and building structures moved into the county.

B. "Residential," "residential development," or "residential unit" means and includes, but is not limited to condominiums, townhomes, duplexes, apartments, second units, and mobile homes and other types of residential units.

C. "Fee" means a monetary exaction, other than a tax or special assessment that is charged by Amador County in connection with approval of a residential development project for the purpose of defraying all, or a portion of, the cost of park facilities related to the residential development project.

D. "Park and recreation facilities" include public park and recreation facilities, open space, ancillary facilities, and any other capital park and recreation facility projects identified in the Amador County general plan, the Amador County Park and Recreation Master Plan, or the county's park and recreation capital facilities plans or other public park and recreation facilities considered and approved by the board of supervisors.

E. "Park and recreation impact" means and includes any residential development project that does not involve the subdivision of land which requires a county permit and generates increased demand for park and recreation facilities within each recreational demand area.

F. "Park and recreation capital facilities plans" means the plan for park and recreation capital improvements as identified in the capital facilities plan contained in the Park and Recreation Master Plan or its successor, as adopted or updated by the board of supervisors. The park and recreation capital facilities plan indicates the estimated cost of capital improvements to be financed with development mitigation fees and appropriate money for capital improvement projects.



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

H. "County" means the County of Amador, a political subdivision of the State of California. (Ord.)

I. "Director" means the county employee designated by the board of supervisors as the Amador County Recreation Director, or as established by written agreement pursuant to section 7.90.080.

7.90.030 Adoption of development mitigation fees for parks.

A. Pursuant to this ordinance, development mitigation fees for parks shall be adopted from time to time by resolution of the board of supervisors after a noticed public hearing to address identified park and recreation facility impacts within the County. Such fee, when adopted, shall be a condition of the issuance of permits for new residential development within the County.

B. In adopting the resolution the board of supervisors shall:

1. Identify the purpose of the fee;
2. Identify the use to which the fee is to be put;
3. Determine a reasonable relationship between the fee's use and the type of residential development project on which the fee is imposed;
4. Determine a reasonable relationship between the need for the park and recreation facility and the impacts from the type of residential development project on which the fee is imposed;
5. Determine a reasonable relationship between the amount of the fee and the cost of the park and recreation facility, or portion of the park and recreation facility; and
6. Establish a schedule of fees for park and recreation facilities. (Ord.)

7.90.040 Applicability of fees.

A. A development mitigation fee for parks shall be charged as a condition of the issuance of a building permit for construction or installation of new residential units.

B. The development impact fee established by this chapter is in addition to any other fees, charges, dedications, or taxes required by state law or county ordinance as a condition of development, including but not limited to Quimby Act dedications/fees.



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7.90.050 Exemptions and fee reductions.

A. Exemptions. The following will be exempted from payment of the development mitigation fees for parks referenced herein:

1. Any residential development project which does not generate any increased demand for park and recreation facilities.
2. Any development project that does not require a county building permit.

B. Fee Reductions

1. The board of supervisors may establish by resolution categories of "Beneficial Projects" which are eligible for fee reductions or waivers. The resolution will establish administrative procedures for granting fee reductions or waivers.
2. Any fee reduction or waiver granted as a result of a fee reduction policy shall apply only to the permit being sought. Any new development application (e.g., condominium conversion of apartments) shall be subject to re-evaluation by the county and may result in the imposition of fees previously reduced or waived.

7.90.060 Timing of fee payment.

A. Imposition of Fees.

1. Fees shall be imposed at the time of building permit issuance. The applicant pays according to the schedule of fees in place on the date the fees are paid or the date of issuance of a certificate of occupancy, whichever is earlier.
2. When the applicant applies for a new permit following the expiration of a previously issued building permit for a development project for which fees were paid, another fee payment is not required, unless (1) the project has been changed in a way that alters its park and recreation impact, or (2) the schedule of fees has been amended since the previous approval, in this event, the appropriate increase or decrease in the fees shall be applied.
3. When fees are paid for a development project and the development project is abandoned without any further action beyond the obtaining of a permit, the payor shall be entitled to a refund of the fees paid, less a portion of the fees sufficient to cover costs of collection, accounting for and administration of the fees paid.

B. Payment of Fee.



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1. Except as set forth in subsection B. 2 and 3 of this section, development mitigation fees for parks shall be paid on the date the final inspection is approved.

2. For residential development containing more than one dwelling unit, the developer may request that the fees be paid in installments based on the phasing of their development project. The decision whether to allow installment payments shall be determined by the director. Any fee installment shall be paid at the time when the first dwelling unit within each phase of development has received its final inspection.

3. The county shall require the payment of fees at an earlier time if the fees will be collected for public improvements of facilities for which an account has been established and funds appropriated and for which the county has adopted a proposed construction schedule or plan prior to final inspection, or the fees are to reimburse the county or any local agency receiving funds pursuant to section 7.90.080 for expenditures previously made.

4. No building permit for any development project shall be issued unless a contract has been executed to pay the fees, and no final inspection or certificate of occupancy for any development project shall be issued unless fees have been paid. (Ord.)

7.90.070 Fee adjustments.

A. A developer of any project subject to the payment of fees pursuant to this ordinance may appeal to the board of supervisors for a reduction, adjustment, or waiver of any development mitigation fee(s) based upon the absence of any reasonable relationship or nexus between the park and recreation impacts of the residential project and either the amount of the fee(s) charged or the type of park and recreation facilities to be financed. The appeal shall be made in writing, shall state the factual basis for the claim of reduction, adjustment or waiver, and shall be submitted to the clerk of the board of supervisors within fifteen calendar days following determination of the fee amount.

B. The director shall review the appeal, develop recommended actions to be taken by the board of supervisors, and submit the recommended actions to the board of supervisors for their consideration at a public hearing to be conducted within sixty days after the filing of the appeal. The decision of the board of supervisors shall be final. If a reduction adjustment or waiver is granted, any change in use from the residential project as approved shall invalidate the waiver, adjustment or reduction of the fee(s). (Ord.)

7.90.080 Administration and use of funds.

A. In cases where the county determines that park and recreation facilities to serve the community should be or are provided by a local agency other than the county, the county may remit the fees collected pursuant to this chapter to such other local agency if the local agency agrees to accept the fees and enters into a written agreement between the county and the local



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agency. In such an event, the local agency shall (i) administer the fees in accordance with the terms and conditions of this ordinance and use the fees in the manner provided herein, and (ii) perform such other duties and obligations of the director under this chapter as shall be agreed upon between the county and such local agency.

B. Funds collected from development mitigation fees for parks shall be used as follows:

1. Funds may be used to acquire, construct, and install park and recreation facilities or reimburse costs of previously constructed facilities.

2. No funds collected pursuant to this ordinance shall be used for periodic or routine maintenance.

3. Funds may also be used to pay debt service on bonds or similar debt instruments to finance the acquisition, construction and installation of related equipment to the park and recreation facilities.

4. Funds may also be used to offset the cost of administration of the fund including audits, yearly accounting and reports, and other costs associated with maintaining the fund. (Ord.)

7.90.090 Fee account.

A. Upon receipt of a fee subject to this ordinance, the county or any local agency receiving funds pursuant to section 7.90.080 shall deposit, invest, account for and expend the development mitigation fees pursuant to California Government Code 66006.

B. Development mitigation fees for parks paid shall be held by the county or any local agency receiving funds pursuant to section 7.90.080 in a separate development mitigation fee account for parks to be expended for the purpose for which they were collected. The county or any local agency receiving funds pursuant to section 7.90.080 shall retain all interest earned on the fees in such accounts and shall allocate the interest to the accounts for which the original fee was imposed. (Ord.)

7.90.100 Developer construction of facilities.

In lieu fee credit for the construction of park and recreation facilities and service improvements is allowable under the following conditions:

A. The costs of park and recreation facilities listed on, or exempted from, the applicable park and recreation capital improvement plan, or county comprehensive plan land use element recreation section, or the adopted park, recreation, and trail maps, or other public park and recreation facilities approved by the director or her/his designee, may be eligible for in-lieu credit.



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B. With prior approval of the director, an in-lieu credit of fees may be granted for actual construction costs (or a portion thereof) of park and recreation facilities provided by the developer.

C. If the actual construction cost is greater than the required relevant fees, the county shall have no obligation to pay the excess amount.

D. An amount of in-lieu credit that is greater than the specific fee(s) required under this ordinance may be reserved and credited toward the fee of any subsequent phases of the same residential development, if such credit is determined to be appropriate and timely, and approved in advance by the director.

E. If an applicant is required, as a condition of approval for a development permit, to construct any off-site park facilities, and the cost of the facilities is determined to exceed the fee due under this ordinance, a reimbursement agreement may be offered in writing by the director. The reimbursement agreement shall contain terms and conditions approved by the director, auditor-controller, county counsel and the board of supervisors. This section shall not create any duty to offer a reimbursement agreement.

F. Park and recreation facilities specifically serving the residential project exclusively may be eligible for partial in-lieu fee credit based on the adopted credit schedule.

G. A developer seeking credit and/or reimbursement for construction or improvements of park and recreation facilities, or dedication of land or rights-of-way, shall submit documentation acceptable to the director to support the request for credit or reimbursement. The director shall determine whether the facilities or improvements are eligible for credit or reimbursement, and the amount of such credit or reimbursement due the developer if so eligible.

H. Any claim for credit must be made at or before the time of application for an approval permit. Any claim not so made shall be deemed waived.

I. Exemptions, credits, reductions, adjustments, or waiver of fees shall not be transferable from one residential project to another without the board of supervisors' approval.

J. Determination made by the director pursuant to this section may be appealed to the board of supervisors by filing a written request with the clerk of the board, together with a fee established by the board of supervisors, within ten working days of the determination of the director. (Ord.)

7.90.110 Condition for refunds.

A. If a permit expires without commencement of construction, the feepayer shall be entitled to a refund of the development mitigation fee(s) paid, with any interest accrued thereon,



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as a condition for the issuance of the permit. The feepayer shall submit a written request for a refund to the director within two years after the expiration date of the permit. Failure to timely submit a request for a refund may constitute a waiver of any right to a refund.

B. The director shall report to the board of supervisors, once each fiscal year, any portion of development mitigation fees remaining unexpended or uncommitted in an account five or more years after deposit and identify the purpose for which the fee was collected. In accordance with Government Code Section 66001, the board of supervisors shall make findings once each fiscal year on any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee, to (1) identify the purpose to which the fee is put; (2) demonstrate a reasonable relationship between the fee and the purpose for which it is charged; (3) identify all sources and amounts of funding anticipated to complete financing of the park and recreation facilities and; (4) designate the approximate dates on which the funding is deposited into the appropriate account.

C. For all unexpended or uncommitted fees for which the findings set forth in subsection (b) of this section cannot be made, the county shall refund to the current record owner or owners of lots or units of the development project(s) on a prorated basis the unexpended or uncommitted fees, and any interest accrued.

D. If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this ordinance exceeds the amount to be refunded, the board of supervisors, after a public hearing, for which notice has been published pursuant to Government Code Section 66001 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fees are collected pursuant to Government Code Section 66001 et seq. and that serves the project on which the fee was originally imposed. (Ord.)

7.90.120 Annual report.

A. At least once every year the director shall present a proposed park and recreation capital improvement plan detailing the specific park and recreation facilities to be funded by development mitigation fees to the board of supervisors for adoption by resolution. Notice of the plan shall be given pursuant to Government Code Section 65090 and Section 66002, as they now exist or may be amended.

B. Except for the first year that this ordinance is in effect, no later than sixty days following the end of each fiscal year, the director shall submit a report to the board of supervisors identifying the balance of fees in the development mitigation fee program fund established pursuant to this ordinance, and the facilities proposed for construction during the next fiscal year. In preparing the report, the director shall adjust the estimated costs of the public improvements in accordance with the appropriate engineering construction cost index as published by Engineering News Record, or its successor publication, for the elapsed time period from the previous July 1st or the date that the cost estimate was developed.



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C. At a public hearing the board of supervisors shall review estimated costs of the park and recreation facilities described in the park and recreation capital improvement plan, the continued need for these facilities, and the reasonable relationship between the need and the impacts of development for which the fees are charged. The board of supervisors may revise the development mitigation fees to include additional projects not previously foreseen as being needed. (Ord.)

7.90.130 Automatic annual adjustment.

Each fee imposed by this ordinance shall be adjusted automatically on July 1st of each fiscal year, beginning on July 1, 2007, by a percentage equal to the appropriate engineering cost index as published by Engineering News Record, or its successor publication, for the preceding twelve months. (Ord.)

7.90.140 Fee revision by resolution.

The amount of each fee established pursuant to this ordinance may be set and revised periodically by resolution of the board of supervisors. This ordinance shall be considered enabling and directive in this regard. (Ord.)

7.90.150 Severability.

If any section, phrase, sentence, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision; and such holding shall not affect the remaining portions of this ordinance. (Ord.)

SECTION III. This ordinance shall be published within fifteen days after the date hereof in a newspaper of general circulation printed and published in the County of Amador, State of California, and shall become effective sixty days after the date hereof.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 13th day of February 2007, by the following vote:

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rich Escamilla, District I
SECONDER:	Theodore Novelli, District III
AYES:	Escamilla, Forster, Boitano, Novelli, Oneto



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Louis D. Bittner

Chairman, Board of Supervisors

ATTEST:

MARDELL ANDERSON, Clerk of the
Board of Supervisors, Amador County,
California

Mardell Anderson

Deputy