



DEVELOPMENT SERVICES Current Planning

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To: Loveland Planning Commission

From: Robert Paulsen, Current Planning Manager

Date: August 27, 2012

Re: **Capital Expansion Fee Credits**

SUMMARY:

This item is a proposed amendment to Title 16 (the subdivision ordinance) of the Loveland Municipal Code; specifically, the amendment addresses Chapter 16.38.030. As such, it is a legislative matter to be considered in a public hearing by the Planning Commission.

RECOMMENDED ACTION:

Subject to additional evidence at the public hearing, City Staff recommends the following motion:

Move to recommend that City Council approve the amendment to Chapter 16.38.030 as described in the August 27, 2012 staff memorandum to the Planning Commission and as specified in the draft ordinance identified as Exhibit A to the August 27, 2012 memorandum, as amended on the record.

DESCRIPTION:

A. Introduction: Recently an application was approved by the City to redevelop property that included multiple contiguous lots with multiple buildings and Capital Expansion Fee (CEF) credits resulting from existing uses. As the redevelopment project proceeded questions came up regarding how the CEF credit resulting from the initial change in use of one of the existing buildings should be applied to the additional new uses within the proposed redevelopment site. Section 16.38.020, below, sets forth the current provisions for applying CEF credits.

16.38.030 Change in use credit.

Whenever an existing use is changed, there shall be a credit in the amount of the then current charges, for the type of use being discontinued, for the capital expansion fee imposed by Section 16.38.020. Such credit shall be applied, first, to the amounts due for such fees on account of any new use established on the same or adjacent premises which are a part of a site being developed or redeveloped, and second, to the amounts



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due for such fees on account of any new use established elsewhere with buildings moved from the original premises. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

B. Interpretations: City staff reviewed Section 16.38.030 and has made the following interpretations to clarify its application in the circumstances described above.

- 1. Amount of Credit:** The amount of the credit is equal to the CEFs that would be due for the discontinued use at the time a new use is established. For example, if the new use is established by issuance of a Certificate of Occupancy on August 23, 2012, then the available credit and fees due are calculated based on the fee schedule in place on August 23, 2012. If the existing building is vacant, then the CEF credit is calculated based on the last known use of the building.
- 2. Application to individual lots:** When the CEF credit is established based on a change in use on a single lot, that credit will be applied only to new uses on that lot. If, for example, the existing use establishes a credit of \$80,000 and the CEFs due for the new use are \$30,000, then a CEF credit of \$50,000 remains. The credit can be applied to the reuse of an existing building, a building addition, and/or a new building on that lot. If the credit is insufficient to cover the CEFs due for a new use, then the balance due must be paid. When the existing use contains individual tenant spaces, such as a retail commercial center, the CEF credit for a change in use would be calculated based on the square footage of the tenant spaces for which the change of use is proposed. The amount of credit will be based on the CEF rate for general retail. For example, if a tenant space is occupied by a use that fits under the general retail category and the new use also fits under that category, then there is no change in use. If the new use in that tenant space does not fit under the general retail category, let's say the new use is a fast food restaurant, then a credit would be established based on the square footage of the general retail use and this credit could be applied to the CEFs due for the fast food restaurant.
- 3. Application to multiple lots within a premise:** When CEF credits are established based on a proposal to redevelop existing uses on multiple contiguous lots the City must approve a Site Development Plan (SDP) to officially recognize the redevelopment site (the "same or adjacent premises") on which CEF credits may be used. The CEF credit is then calculated based on the existing uses within the SDP that are to be changed. The SDP can include reuse of existing buildings, building additions, and/or new buildings. The credit is available to be applied to new uses within the SDP on a first come, first served basis, as those new uses are legally established by issuance of a Certificate of Occupancy. For example, if existing uses within a SDP create a credit of \$90,000 and the CEFs for the first new use are \$50,000, then the remaining credit of \$40,000 would be applied to the second new use, and subsequent new uses, as those uses are officially

established by issuance of a Certificate of Occupancy. If the credit is insufficient to cover the CEFs for a new use, then the balance due must be paid.

4. **Nature of CEF credits:** CEF credits are administered, tracked, and applied by the City to changes in use approved by the City. CEF credits do not constitute a property right of any kind and are not owned by the lot owner or transferrable or assignable by the lot owner to any third party.
5. **Relocation of existing building:** A CEF credit may also be applied to a new use established with a building moved from an individual lot or from within a SDP.

C. **Draft Code Language:** Draft code language (see *Exhibit A*) has been prepared by the City Attorney's office to clarify the provisions in Section 16.38.030.

ATTACHMENTS:

1. **Exhibit A:** Draft code language has been prepared by the City Attorney's office to clarify the provisions in Section 16.38.030.
2. **Exhibit B:** A complete copy of existing Chapter 16.38 has been provided for reference

FIRST READING _____

SECOND READING _____

ORDINANCE NO. _____

**AN ORDINANCE REPEALING AND REENACTING SECTION 16.38.030
OF THE LOVELAND MUNICIPAL CODE REGARDING CHANGE IN
USE CREDIT FOR CAPITAL EXPANSION FEES**

WHEREAS, Loveland Municipal Code Chapter 16.38 authorizes the City of Loveland to impose and collect capital expansion fees to fund growth-related costs incurred in providing for new and expanded capital facilities made necessary by new development; and

WHEREAS, Code Section 16.38.030 currently provides that under certain circumstances, credit can accrue to be applied to the payment of capital expansion fees whenever an existing use is changed; and

WHEREAS, the City Council desires to repeal and reenact Section 16.38.030 in order to clarify the application of the existing credit provisions to new uses established on the same or adjacent premises, including multiple lots, which are a part of a site being developed or redeveloped.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF LOVELAND, COLORADO:**

Section 1. That Section 16.38.030 of the Loveland Municipal Code is hereby repealed in its entirety and reenacted to read in full as follows:

16.38.030 Change in use credit.

A. Definitions. As used in this Section 16.38.030, unless the context requires otherwise, the following terms shall have the meanings set forth below:

1. "Capital expansion fee" means the fees imposed upon every additional dwelling unit of residential development and every square foot of retail, non-retail, and industrial development pursuant to Section 16.38.020.
2. "Certificate of occupancy" means any temporary or permanent certificate of occupancy issued under Code Chapter 15.08.
3. "Credit" means the change in use credit for capital expansion fees determined in accordance with paragraph B. below.
4. "Development" means any improvement of property, other than redevelopment, for which a full building permit is issued, any change in use of property, any use of property which has been vacant for a year or more, or any use of property

EXHIBIT A

subject to compliance with the City of Loveland Site Development Performance Standards and Guidelines.

5. "Letter of Completion" means evidence issued by the city's building division that construction authorized by a building permit has been substantially completed where: (a) uses are not determined at time of building permit application and the building permit authorizes construction of core and shell only; or (b) the permit authorizes an expansion or remodel for an existing use, with no change in use.
6. "Lot" means a portion of a subdivision intended as a unit for transfer or ownership or for development, which has access to a public right of way.
7. "Redevelopment" means renovation, modification, or reconstruction of an existing residential structure or an existing retail, non-retail, commercial, or industrial structure.
8. "Site" means two or more contiguous lots which are being developed or redeveloped pursuant to the same site plan.
9. "Site plan" means a site development plan approved pursuant to Code Chapters 18.46 and 18.47, or if no site development plan is required under Chapters 18.46 and 18.47, a site plan submitted with an application for a building permit.
10. "Use" means a land use authorized and approved pursuant to the applicable provisions of Title 18 of this code.

B. Change in Use Credit. Whenever an existing use on a lot is changed, a credit for capital expansion fees shall be calculated and made available for application as provided in paragraphs C. and D. below for the payment of any capital expansion fee imposed by Section 16.38.020, in accordance with the following:

1. The amount of the credit shall be the amount of capital expansion fees that would be due for a discontinued use as calculated in accordance with the then current capital expansion fees schedule. If no use is then in existence, the credit shall be based on capital expansion fees that would be due for the last previous use for which a Certificate of Occupancy or Letter of Completion was issued by the City.
2. The amount of the credit shall be established at the time capital expansion fees for a new use is due under Section 16.38.020.
3. If a change in use occurs in only a portion of a structure on a lot, the credit shall be calculated only on that portion of the structure for which a use is changed. For example, if a lot includes a single structure used as a retail center and the existing use being changed is only as to a portion of such the structure, a credit shall be determined based only on the square footage of the structure that is the subject of a change in use.

C. Application of Credit on Single Lot.

1. The credit shall be applied to capital expansion fees due for new uses established on the lot.
2. If capital expansion fees for a new use on a lot are greater than the amount of the credit, the difference shall be due at the time set forth in Section 16.38.020.
3. If capital expansion fees for a new use on a lot are less than the amount of the credit, no additional capital expansion fees shall be due for the new use on the lot.

4. Any excess capital expansion fee credit after application to a new use established on a lot may be applied thereafter to each additional new use or change in use on the lot on a first-come, first-served basis, based on the date upon which a complete application for such development has been accepted by the City, except to the extent the credit has been previously used on other lots on the site as provided in paragraph D. or E. below.
- D. Application of Credit to Site with Multiple Lots. Any excess credit after application to a new use established on a lot may be applied to each additional new use or change in use on adjacent lots within a site on a first-come, first-served basis, based on the date upon which a complete application for development for each new use has been accepted by the City.
- E. Application of Credit Offsite. Any credit not used on a single lot or within a site may be used for capital expansion fees due for any new use established outside the lot or site only with buildings moved from the lot or site.
- F. Nature of Credit. Any capital expansion fee credit established under this Section 16.38.030 shall not constitute a property right of any kind and shall not be owned by the property owner or transferable or assignable by the property owner to any third party. Except as provided in paragraph E. above, credit shall remain with the site from which it arises.

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full.

Section 3. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of _____, 2012.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Title 16

SUBDIVISION OF LAND*

Chapters:

- 16.04 General**
- 16.08 Definitions**
- 16.10 Appeals**
- 16.12 Planning Commission**
- 16.16 Review Procedures**
- 16.20 Submittal Procedures and Requirements**
- 16.21 Survey Monuments**
- 16.24 Design Standards**
- 16.28 Boundary Line Adjustments**
- 16.32 Lot Merger**
- 16.36 Vacation of Right-of-way/Easements/Obsolete Subdivision**
- 16.38 Capital Expansion Fees**
- 16.39 School Land Dedication and In-Lieu Fees**
- 16.40 Improvements**
- 16.41 Adequate Community Facilities (ACF)**
- 16.42 Street Maintenance Fee**
- 16.43 Affordable Housing**

- Prior history: Prior code §§ 24.1, 24.2-2, 24.2-3, 24.2-4, 24.3, 24.3-1, 24.3-2, 24.3-3, 24.3-4, 24.3-5, 24.3-6, 24.3-7, 24.3-8, 24.3-9, 24.4, 24.4-1, 24.4-2, 24.4-3, 24.4-4, 24.4-5, 24.5-1, 24.5-2, 24.5-3, 24.5-4, 24.5-5, 24.6, 24.6-1, 24.6-2, 24.6-3, 24.6-4, 24.6-5, 24.6-6, 24.6-7, 24.6-8, 24.7, 24.7-1, 24.7-2, 24.7-3, 24.7-4, 25.7-5, 25.7-6, 24.7-7, 24.7-8, 24.7-9, 24.8-1, 24.8-2, 24.9-1, 24.9-2, 24.9-3, 24.10, 24.11-1, 24.11-2, 24.11-3, 24.11-4, 24.11-5, 24.11-6, 24.11-8, 24.11-13, 24.11-14 and Ords. 960, 1053, 1129, 1167, 1193, 1200, 1214, 1263, 1270, 1272, 1284, 1290, 1299, 1305, 1325, 1384, 1389, 1412, 1423, 1436, 1437, 1442, 1447, 1452, 1459, 1461, 1520, 1576, 1610, 1695, 1697, 1709, 1711, 1732, 1734, 1739, 1743, 1827, 1914, 1951, 2021, 2038, 2064, 2065, 2071, 3021, 3045, 3082, 3095, 3263, 3326, 3328, 3361, 3377, 3491, 3493, 3545, 3766, 3932, 3987, 3849, 4009, 4019, 4054, 4055, 4096, 4105, 4116, 4117, 4134, 4155, 4170, 4193, 4278, 4279, 4284, **4298**, 4320, 4365, **4444**, 4450, 4449, 4476, 4502, 4510, 4520, 4522, 4525, 4540, 4558, 4559, 4569, 4590, 4614, 4617, 4661, 4667, 4753, 4755, 4881, 4918, 4976, 5025, 5048, 5107, 5222, Ord. 5411, 2009; Ord. 5424; Ord. 5469 Ord. 5485, 2010; Ord. 5511, 2010; Ord. 5520, 2010; Ord. 5619, 2011

Chapter 16.04

GENERAL

16.04.010 Purpose.

The following rules and regulations are for the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the city and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, comfort, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including among other things, energy conservation, promotion of solar energy utilization, adequate provision for traffic, the promotion of safety from fire, flood waters and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of

Chapter 16.38

CAPITAL EXPANSION FEES

Sections:

16.38.010	Intent.
16.38.020	Fees imposed.
16.38.030	Change in use credit.
16.38.050	Unlawful to occupy.
16.38.060	Unpaid capital expansion fee-Lien.
16.38.070	Exemption from and credit for fee.
16.38.071	Deferral of Fees
16.38.072	Exemption for Historic Downtown Loveland.
16.38.075	Exemption for certain facilities.
16.38.085	Capital expansion fees for qualified affordable housing.
16.38.090	Reduction in fee for minimal traffic.
16.38.100	Disposition of fees.
16.38.110	Review.

16.38.010 Intent.

It is the intent of this chapter to adopt a rational system for identifying growth-related costs incurred by the city in providing for new and expanded capital facilities made necessary by expanded population levels and economic activity levels, to develop a fee structure therefor directly related to such costs and to provide a method for collection of such fees. It is the further intent of this chapter that such fees accurately reflect actual growth-related capital costs, that once such costs are paid ongoing operating charges will be similar to charges imposed prior to such development, that the system be understandable and inexpensive to apply, that policies and fees will be subject to revision as conditions change and that the system will be linked to a capital improvement program designed to provide the facilities for which the fees are imposed. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.020 Fees imposed.

- A. There are imposed capital expansion fees upon every additional dwelling unit of residential development and every square foot of retail, non-retail and industrial development.
- B. Capital expansion fees shall be due and payable as follows:
 1. Except in the case of an accessory dwelling unit, for any activity requiring a certificate of occupancy, the fees shall be due and payable at the time that a final inspection for a certificate of occupancy is requested, except that if a temporary certificate of occupancy or other certificate of occupancy does not issue within thirty days after the call for inspection, the paid fees shall be returned to the party who paid such fees.
 2. Upon a change in the use of property where the new use is in a different category for which additional or higher fees are applicable, such additional or higher fees shall be due and payable at the time that a final inspection is requested, but if no certificate of occupancy is required, then at such time as the new use is actually commenced.
 3. For all other activities for which a certificate of occupancy is not required, including expansion or remodeling which creates additional dwelling units or additional square footage for commercial or industrial use, fees shall be due and payable at the time such additional space is actually occupied, except that a credit shall be received for all fees for the prior use.
 4. Prior to recording any annexation map of property which contains a mobile home which existed on the property on or before July 1, 1984, or which contains the type of structure for which capital expansion fees are currently collected and for which a building permit was issued on or after July 1, 1984.

- C. The director may allow a person to defer payment, of a portion of the capital expansion fees for unfinished space, if any, in proportion to the pro rata amount of such unfinished space. The length of such deferral shall be paid when put into use (when completed), but shall not exceed three years.
- D. Capital expansion fees shall be adjusted annually per Section 16.38.110 and shall be reviewed and approved by resolution of city council at least every five years commencing in 2000. (Ord. 4661 § 1, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.030 Change in use credit.

Whenever an existing use is changed, there shall be a credit in the amount of the then current charges, for the type of use being discontinued, for the capital expansion fee imposed by Section 16.38.020. Such credit shall be applied, first, to the amounts due for such fees on account of any new use established on the same or adjacent premises which are a part of a site being developed or redeveloped, and second, to the amounts due for such fees on account of any new use established elsewhere with buildings moved from the original premises. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.050 Unlawful to occupy.

It is unlawful for any person or entity to occupy or use any real property for any purpose for which a capital expansion fee is due and payable prior to having paid such capital expansion fee. Each day of such occupancy or use shall be a separate offense. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.060 Unpaid capital expansion fee-Lien.

All capital expansion fees shall be a lien upon each lot or parcel of land from the due date thereof, determined as set forth in Section 16.38.070(A), until paid. If such fees are not paid when due, in addition to any other means provided by law, the city clerk shall certify such delinquent charges to the treasurer of Larimer County and the charges shall be collected in the same manner as though they were part of the taxes. The city reserves the right to withhold or revoke any permits, certificates or other approvals to any applicant who is delinquent in the payment of capital expansion fees. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.070 Exemption from capital expansion fees – generally.

The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding that such waiver is in the best interests of the public by encouraging activities that provide significant social, economic, or cultural benefits. When a capital-related fee is waived pursuant to this section, the city council shall direct that the waived fee be paid by the general fund or another appropriate fund. (Ord. 5433 § 1, 2009; Ord. 4661 § 3, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.071 Deferral of Fees

The city council may allow for the deferral of fees imposed on new development in the city. The city council may do so by approving by resolution a written agreement entered into with the person owing the fees, which agreement shall contain such terms and conditions as the council determines are in the best interests of the city and provided that the council also determines and finds in the resolution that allowing the deferral of capital expansion fees or any other fees imposed on new development will serve a public purpose. A public purpose may include, without limitation, providing the public with significant social, economic or cultural benefits. In the event that any amounts owed under the agreement are not paid when due and except as otherwise provided in the deferral agreement, such unpaid amounts shall be a perpetual lien upon the real property for which the deferred fees are owed from the date the fees are due under the agreement until paid and such lien shall have priority over all

other liens except those for real property taxes. If any deferred fee is not paid when due, the city may pursue all remedies available to it under the law to collect such fee, including, without limitation, by judicially foreclosing the lien. The city clerk may also certify any delinquent fees and other amounts owed under the deferral agreement to the treasurer of Larimer County and such fees and amounts shall then be collected in the same manner as though they were real property taxes. The agreement may further provide that the city shall have the right to withhold or revoke any building permits, certificates of occupancy, and other city approval relating to the development of the real property for which deferred fees are delinquent in payment. (Ord. 5325 § 1, 2008; Ord. 4918 § 1, 2004)

16.38.072 Exemption for Historic Downtown Loveland.

A. The capital expansion fees (CEFs) imposed by this chapter and any building permit fees imposed upon a construction project by the city, shall not be charged or collected for any construction project located within the boundaries of Historic Downtown Loveland. When a construction project is exempt from capital related fees pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund. (Ord. 5433 § 2, 2009)

B. As used in this section the term “Historic Downtown Loveland” means that area described as follows:

Beginning at the point of intersection of the centerlines of Washington Avenue and E. 4th Street, then extending north along said centerline to the intersection of the centerline of the alley between E. 7th Street and E. 8th Street, then west along said centerline to the intersection of the centerline of the alley between N. Lincoln Avenue and N. Jefferson Avenue, then extending north along said centerline to its intersection with the intersection with the centerline of E. 10th Street, then west to the intersection with the centerline of N. Lincoln Avenue, then extending north along said centerline to the Great Western/Omni Railroad tracks, then west along said tracks to the intersection with the tracks of the Burlington Northern/Santa Fe Railroad, then north to the east/west extension of the centerline of the alley shown on the Plat of Geist Subdivision, then west along said centerline of the alley to its intersection with the centerline of Garfield Avenue, then south along the centerline of Garfield Avenue to the intersection of the centerline of 2nd Street SW, then to the northwest corner of the Henrickson Addition, then south along the west line of the Henrickson Addition and continuing south to the Farmers Ditch, then east along Farmers Ditch to the intersection of said ditch and the centerline of S. Cleveland Avenue, then north along the said centerline to the intersection of the centerline of 3rd Street SE, then east along said centerline to the intersection of the centerline of S. Jefferson Avenue, then north along the said centerline to the projected intersection of the south property line of the residence at 110 S. Jefferson Avenue, then east along the southern property line of said residence, then continuing east along south property line of the residence at 117 S. Washington Avenue, then east to the intersection of the centerlines of Washington Avenue and the alley between 1st Street SE and 2nd Street SE, then east along said centerline to the intersection of the centerline of Monroe Avenue, then north along the said centerline to the intersection of the centerline of E. 1st Street, then east along the said centerline to the intersection of the centerline of Hayes Avenue, then north along said centerline to the intersection of the centerline of E. 3rd Street, then west along said centerline to the west side of the Loveland/Greeley Ditch, then north along the ditch to the intersection of the centerline of E. 4th Street, then west along said centerline to the P.O.B. (Ord. 4614 § 1, 2001; Ord. 4520 § 1, 2000)

16.38.075 Exemption from capital expansion fees – not-for-profit facilities.

A. The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed will provide not-for-profit facilities open to Loveland area residents that might otherwise be provided by the city at taxpayer

expense, that such facilities relieve the pressures of growth on city-provided facilities, and that such facilities do not create growth or growth impacts. When a capital-related fee is waived pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.

- B. No certificate of occupancy shall be issued for any not-for-profit facility that obtains a fee waiver pursuant to this section unless a deed restriction or encumbrance, in a form approved by the city attorney, prohibiting the sale of the not-for-profit facility to any person or entity for a use that does not meet the requirements of subsection A. for a period of twenty years from the date on which a certificate of occupancy was first issued for the property. The deed restriction or encumbrance shall contain a provision stating that it is the intent of the parties that the respective rights and obligations set forth in the deed restriction or encumbrance shall constitute covenants, equitable servitudes, and/or liens that run with the land and shall benefit and burden any personal representatives, successors, and assigns of the parties. The deed restriction or encumbrance shall also contain a provision indicating that it automatically expires: (1) if title to property mortgaged by an institutional lender is transferred to the institutional lender, or to the institutional lender's successor or assign, by foreclosure or deed-in-lieu of foreclosure; or (2) twenty years after the date on which a certificate of occupancy was first issued for the property, provided there is no existing default under the deed restriction or encumbrance. (Ord. 5433 § 3, 2009; Ord. 4661 § 4, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4365 § 1, 1998)

16.38.080 Exemption from capital expansion fees – qualified affordable housing.

- A. The city council may by resolution grant an exemption from all or part of the capital expansion fees or any other fees imposed by the city upon new development, whether for capital or other purposes, upon a finding, set forth in a development agreement, that the project for which the fees would otherwise be imposed is a qualified affordable housing development. When a capital-related fee is waived pursuant to this section, there shall be no reimbursement to the capital expansion fund by the general fund or any other fund, unless the capital-related fee is a utility fee or charge in which case the affected utility fund shall be reimbursed by the general fund.
- B. Exemptions granted pursuant to this section shall be done in accordance with the following tables:
1. If granted for rental housing, the exemption shall be as follows:

Percentage of area median income to be served	Minimum percentage of units in development set aside as affordable housing	Percentage of fees waived for affordable housing only
30%	10%	100%
40%	15%	90%
50%	20%	80%
60%	40%	70%

2. If granted for "for-sale" housing, the exemption shall be as follows:

Percentage of area median income to be served	Minimum percentage of units in development set aside as affordable housing	Percentage of fees waived for affordable housing only
40%	5%	90%
50%	10%	80%

60%	15%	70%
70%	20%	60%
75%	25%	25%
80%	30%	15%

3. Notwithstanding the above provisions of this paragraph B., the city council may increase the percentage of fees waived under this section upon making a finding in its resolution waiving the fees that such percentage increase will serve a public purpose, which public purpose shall be specified in the resolution.
- C. Exemptions granted pursuant to this section shall be effective for one year from the date on which the exemption is granted unless extended by the city council for good cause shown. Any such extension shall be set forth in an amendment to the development agreement approved by resolution of the city council. (Ord. 5433 § 4, 2009)

16.38.085 Capital expansion fees for affordable housing developments.

- A. Capital expansion fees, water rights requirements and fees, and any other fees imposed by the city upon an affordable housing development, whether for capital or other purposes (collectively, "development fees"), shall be calculated as of the date on which the city council adopts a resolution designating the housing development as affordable (the "designation date"). The development fees calculated under this section shall be valid for five years thereafter. At the end of the five-year period, the development fees shall be calculated each year thereafter on the basis of those development fees in effect five years prior. This adjustment shall continue each year until the last affordable housing unit within the affordable housing development receives a building permit, or the housing development loses its affordable designation in accordance with subparagraph B. below.
- B. Ten years after the designation date, the housing development shall lose its affordable designation unless at least one affordable housing unit within the housing development has received a certificate of occupancy, in which case the development fees shall continue to be calculated as set forth in subparagraph A. above. Notwithstanding the foregoing, any developer that has not obtained a certificate of occupancy at the end of the ten-year period may request that the affordable housing commission consider and make a recommendation to the city council to extend the housing development's affordable designation and the fee reduction provided for herein for good cause shown. Any such extension shall be set forth in a development agreement approved by resolution of the city council.
- C. Notwithstanding anything herein to the contrary, the developer shall be entitled to pay the lower of the development fee in effect as of the designation date and the development fee in effect at the time such fees are paid. (Ord. 5619 § 2, 2011; Ord. 5433 § 5, 2009; Ord. 4522 § 2, 2000; Ord. 5433 § 5, 2009)

16.38.090 Reduction in fee for minimal traffic.

The street capital expansion fee may be reduced for a specific land use if data deemed reliable by the city establishes that traffic for both peak hour and total daily volumes for the property are each less than sixty (60) percent of the traffic assumptions used in establishing the fees for that specific land category in the adopted fee tables. The new fee will be based on a simple average of the data deemed reliable by the city for the property and the traffic assumptions used to establish the adopted fees. (Ord. 4661 § 6, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.100 Disposition of fees.

All fees collected pursuant to this chapter shall be deposited in a public works fund to be created by resolution of the city council, and to be used for the projects therein identified. Such resolution shall be established to comply with the provisions of Section 31-15-302(1)(f)(I), Colorado Revised Statutes. (Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)

16.38.110 Review.

The fees imposed by this chapter and moneys expended from the public works fund shall be reviewed as follows:

- A. The capital expansion fees shall be adjusted annually, effective January 1 of each year. The adjustment shall be equal to the percentage change in the Construction Cost Index for the Denver area as set forth in the preceding year's September issue of the Engineering News-Record published by McGraw Hill Companies. However, with respect to the street capital fee, the adjustment factor shall be equal to the most current preceding eight quarters' average annual percentage change in the construction costs as determined by the Colorado Department of Transportation Construction Cost Index.
- B. The city manager shall report to the city council, in conjunction with the presentation of the proposed budget, annually, on the actual and proposed expenditures and projects accomplished and to be accomplished from the public works fund. (Ord. 4753 § 1, 2003; Ord. 4661 § 6, 2001; Ord. 4444 § 1 (part), 1999; Ord. 4298 § 1 (part), 1997)