

ORDINANCE NO 09-01

AN ORDINANCE REPLACING THE CITY OF WESTMORLAND ORDINANCE NO 92-05 TO BE KNOWN AS THE "DEVELOPMENT IMPACT FEE ORDINANCE" TO ALLOW FOR THE COLLECTION OF DEVELOPMENT IMPACT FEES, ESTABLISHING SUCH FEES, AND MORE PARTICULARLY SETTING FORTH THE TITLE AND PURPOSE AND PRESCRIBING THE PROCEDURES FOR CARRYING OUT THE PURPOSE HEREOF; ATTACHING AND INCORPORATING THE "CITY OF WESTMORLAND DEVELOPMENT IMPACT FEE REPORT" DATED DECEMBER 16, 2009 AS APPENDIX "A" HERETO; PROVIDING FOR CONSTRUCTION AND ACQUISITION; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, after a public hearing by the City Council to consider a study entitled, "City of Westmorland Development Impact Fee Report," dated December 16, 2009, the City Council has made and does hereby make the following findings, to wit:

- 1) That the City is responsible for and committed to the provision of public facilities and services at levels necessary to cure any existing public service deficiencies in already developed areas;
- 2) That such facilities and service levels shall be provided by the City utilizing funds allocated via the capital budget and capital improvements programming processes and relying upon the funding sources indicated therein;
- 3) That new residential and nonresidential development, however, will cause and impose increased and excessive demands on existing City public facilities and services including, without limitations, administrative facilities, fire protection, law enforcement, parks, circulation (streets), water and wastewater that would not otherwise be necessary;
- 4) That the City Council has considered and accepted the findings contained in the "City of Westmorland Development Impact Fee Report," dated December 16, 2009 which indicates build out projections, public facilities analysis and the methodology for the determination of a development impact fee for administrative facilities, fire protection, law enforcement, parks, circulation (streets), water and wastewater and that these findings are incorporated herein by reference;
- 5) That the build out projections as contained in the program are based on the City's Service Area Plan dated May 3, 2005 as modified in the Development Impact Fee Report – Build Out Projections;
- 6) That the build out projections as contained in the program indicate that such development will continue and will place ever-increasing demands on the City to provide necessary public facilities;

- 7) That to the extent that new development places demands on public facility infrastructure, those demands should be satisfied by shifting the responsibility for financing the provision of such facilities from the public at large to the developments actually creating the demands;
- 8) That the amount of the development impact fee to be imposed shall be determined by the cost of the additional facilities needed to support such development;
- 9) That the City Council, after careful consideration of the matter, hereby finds and declares that a development impact fee imposed upon residential and nonresidential development to finance administrative facilities, fire protection, law enforcement, parks, circulation, water and wastewater facilities, the demand for which is created by such development is in the best interest of the general welfare of the City and its residents, is equitable, does not impose an unfair burden on such development by forcing developers and builders to pay more than their fair share or proportionate share of the cost, and deems it advisable to adopt this ordinance as hereinafter set forth;
- 10) That there is a reasonable relationship between the amount of the impact fee and the cost of public facilities attributable to the development upon which the fee will be imposed because the fee is based only on the cost of providing the facilities necessary to serve the new development as discussed in the report.

It is deemed by the Mayor and City Council to be for the interests of the City of Westmorland, California, that said Ordinance be adopted, NOW, THEREFORE,

BE IT ORDAINED, by the Mayor and City Council of the City of Westmorland that a new Ordinance be added, to read as follows:

- I. **TITLE:** This ordinance shall be known and cited as “Development Impact Fee Ordinance”.
- II. **PURPOSE:** The purpose of this ordinance is to prescribe the procedure whereby developers of land shall pay a development impact fee for the purpose of providing capital improvements needed to serve future residents and users of such development. It is further the purpose of this Ordinance to:
 1. Ensure that adequate facilities are available to serve new growth and development;
 2. Promote orderly growth and development by establishing uniform standards by which the City may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

3. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements;
4. Collect and expend development impact fees pursuant to the enabling powers granted by the provision of the California Government Code Sections 66000 – 66025; and
5. Provide the legal and procedural basis for the implementation of development impact fees within the benefit area

III. **DEFINITIONS:** As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

1. “Applicant” means the property owner, or duly designated agent of the property owner of land on which a request for development approval is received by the city.
2. “Benefit Area” means the geographic area within which development fees are collected and expended for a particular type of capital improvement serving development projects within such area. Also identified as “Study Area”.
3. “Calculate” means the determination of the amount of development impact fees to be collected based on the need for capital improvements related to a particular development project.
4. “Capital Improvement” means land and/or facilities for the storage, treatment or distribution of water; for the collection and disposal of stormwater or for flood control purposes; for the generation of electricity or the distribution of gas or electricity; for purposes of transportation or transit, including, but not limited to, streets and supporting improvements, roads, overpasses, bridges, airports and related facilities; for parks and recreational improvements; for public safety, including police and fire services; for public buildings, including public libraries; or for any other capital project identified in the city’s adopted capital improvement program.
5. “Capital improvements plan” means the five (5) year plan for capital improvements adopted annually by the city council. The capital improvements plan describes the approximate location, size, and time of availability and estimated cost of capital improvements and appropriates money for such capital improvement projects.
6. “Collection” means the point at which the development impact fee is actually paid by the applicant to the city.
7. “Commitment” means earmarking of development impact fees to fund or partially fund capital improvements serving new development projects.
8. “Development approval” means tentative plat or parcel map approval or, building permit issuance if development fees could not be lawfully imposed at tentative plat or parcel map approval.

9. "Development impact fee" means any monetary exaction imposed as a condition of or in connection with approval of a development project of the purpose of defraying all or a portion of the cost of capital improvements related to the development project.
10. "Development project" means any project undertaken for the purpose of development and includes a project involving the issuance of a permit for construction or reconstruction and permits issued for the addition to or remodeling, rehabilitation, alteration or improvement of an existing building or structure which constitute a change in use or occupancy.
11. "Dwelling unit" means a building or portion thereof either designed for or occupied for residential purposes by one person living alone or a group of two or more persons living together whether related to each other by birth or not, but not including hotels, boarding and lodging houses, and trailers (unless the trailer meets building code requirements for dwelling unit).
12. "Equivalent Dwelling Unit" are units of measure that standardize all land use types (housing, retail, office, etc.) to the level of demand created by one single-family housing unit.
13. "Imposition" means the determination that a particular development project is subject to the conditions of payment of development impact fees as a condition of development approval.
14. "Manufactured housing" means and includes "manufactured housing," "mobile homes" and "factory-built housing" as such terms are defined in Division 13, Part 2.1, Chapter 1 and Division 13, Part 6, Chapter 2 of the Health and Safety Code. The term "manufactured housing" shall not include "commercial coaches," "recreational vehicles," or "travel trailers" as such are defined in Division 13, Part 2.1, Chapter 1 of the Health and Safety Code of the State.
15. "Modular buildings" mean any building or building component, other than a manufactured / mobile home, which is constructed according to standards contained in the Uniform Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.
16. "Nonresidential development project" means all development other than a residential development project.
17. "Residential development project" means any development undertaken for the purposes of creating a new dwelling unit or units and involving the issuance of a building permit for such construction, reconstruction or use.

IV. **APPLICABILITY:** This chapter applies to all impact fees imposed by the city as a condition of development approval for the purpose of financing capital improvements, the need for which is attributable to such development, unless expressly herein exempted, including but not limited to:

1. Administrative Impact Fee
2. Park Impact Fee
3. Law Enforcement Impact Fee
4. Fire Protection Impact Fee

5. Circulation Impact Fee
6. Water Facility Impact Fee
7. Wastewater Facility Impact Fee

V. **EXEMPTIONS:** The provisions of this ordinance do not apply to:

1. Taxes or special assessments levied by the city;
2. Fees for processing development application or approvals;
3. Fees for enforcement of or inspections pursuant to regulatory ordinances; or
4. Fees collected under development agreements adopted pursuant to Government Code Section 65864 et seq.
5. Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt;
6. Remodeling or repairing a structure which does not increase the number of equivalent dwelling units;
7. Replacing a residential unit, including a modular building or manufactured / mobile home, with another residential unit on the same lot, provided that the number of equivalent dwelling units does not increase;
8. Placing a temporary construction trailer or office on a lot;
9. Constructing an addition on a residential structure which does not increase the number of equivalent dwelling units;
10. Adding uses that are typically accessory to residential uses, such as tennis courts or personal storage shed/structure, unless it can be clearly demonstrated that the use creates an additional impact on the capacity of system improvements.
11. Upon demonstration by fee payer by documentation such as utility bills and tax records, to the installation of a modular building, manufactured / mobile home or recreational vehicle on that same lot or space for which a development impact fee has been paid previously, and as long as there is no increase in equivalent dwelling units.

An exemption must be claimed by the applicant prior to issuance of a building permit. Any exemption not so claimed shall be deemed waived by the applicant. Application for exemption shall be submitted to and determined by the Mayor, or his or her duly designated agent, within ninety (90) days. Appeals of the Mayor's— or his or her duly designated agent's— determination shall be made under the provisions of Section XIV of this Ordinance entitled "APPEALS."

VI. **IMPOSITION, CALCULATION AND COLLECTION OF DEVELOPMENT IMPACT FEES**

1. Development impact fees shall be imposed as a condition of approval of a development project.
2. Development impact fees shall be imposed by affixing the following language to the development approval:

The developer shall pay all applicable impact fees and capacity fees at the rates in effect at the time of issuance of building permits.

3. Development impact fees shall be calculated at the time of issuance of a building permit or a manufactured / mobile home installation permit for all development projects and shall be collected in accordance with **Government Code Section 66007**. The calculation of development impact fees due shall be based on the development impact fee schedule in effect at the time of issuance of a building permit. The City shall calculate the amount of the impact fee due for each building permit or manufactured home installation permit by the procedure set forth in the program within thirty (30) days of submittal of complete permit plans for residential development and within sixty (60) days of submittal of complete permit plans for nonresidential development.
4. No final inspection or certificate of occupancy shall be issued until all development impact fees due for the development project have been paid.
 - A. For residential projects, the impact fees shall be paid for each dwelling unit prior to final inspection or certificate of occupancy.
 - B. For nonresidential projects, the impact fees shall be paid prior to final inspection.
 - C. If a capital improvement plan has been adopted identifying the approximate location, size, time of availability and cost estimate for improvements to be financed by the fees collected, then the impact fee may be collected prior to the issuance of a building permit.
5. Development impact fee amounts shall be established, and may be amended from time to time by city council resolution.
6. A manufactured home unit may not locate on a site unless the development impact fee is paid pursuant to this chapter or has been previously paid on a previous manufactured / mobile home unit on the same site.
7. The calculation of a development impact fee shall be in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.
8. A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in this Ordinance and in the report that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

9. A development impact fee shall be calculated on the basis of Equivalent Dwelling Units for water and wastewater facilities dependent on the specific use. The City Engineer shall determine Equivalent Dwelling Unit for those developments.
10. If the development for which a building permit or manufactured home installation permit is sought contains a mix of uses, the impact fee will be calculated for each type of use.
11. If all or part of the Development Project is sold prior to payment of the DIF, the property shall continue to be subject to the requirement for payment of the DIF provided herein.
12. Certification: Prior to making an application for a building permit or manufactured home installation permit, a prospective applicant may request in writing a written certification of the development impact fee schedule or individual assessment for a particular project which shall establish the development fee for a period of one (1) year from the date of certification. However, this provision does not mandate that the city must provide the certification.
13. Individual Assessment: Individual assessment of impact fees is permitted in situations where the fee payer can demonstrate by clear and convincing evidence that the established impact fee is inappropriate.
 - A. Individual assessment of development impact fees may be made by application to the Mayor, or his or her duly designated agent, prior to receiving building permits, manufactured installation permits, or other necessary approvals from the City. The Mayor, or his or her duly designated agent, shall evaluate such individual assessments under the guidelines provided for in 13.D of this Section. If the guidelines are met, the individual assessment shall be approved by the Mayor, or his or her duly designated agent, and forwarded to the City Council within thirty (30) days of receiving such application.
 - B. Late applications for individual assessments may be submitted within thirty (30) days after the receipt of a building permit only if the fee payer makes a showing that the facts supporting such application were not known or discoverable prior to receipt of a building permit and that undue hardship would result if said application is not considered.
 - C. The Mayor, or his or her duly designated agent, shall render a written decision regarding the individual assessment and forward it to the City Council within thirty (30) days of the date a complete application is submitted. The decision of the Mayor, or his or her duly designated agent,

shall establish the development impact fee for the project in question for a period of one (1) year from the date said decision becomes final.

D. The Mayor, or his or her duly designated agent, shall evaluate an application for individual assessment and may approve the same if fee payer has shown by clear and convincing evidence that the established impact fee is inappropriate and that the following facts and conditions exist.

1. Exceptional or extraordinary circumstances or conditions apply to the developments that do not apply generally to other properties in the vicinity of the development.
2. An individual assessment is necessary for the reasonable and acceptable development of the property.
3. The approval of the individual assessment will not be materially detrimental to the public welfare or injurious to property in the vicinity in which the development is located.
4. The approval of the individual assessment will not adversely affect the capital improvement plan for the City.

E. Appeals to the Mayor's, or his or her duly designated agent's, determination of individual assessment shall be made to the City Council by the filing of an appeal with the City Clerk within thirty (30) days of the date of mailing, faxing, or personal delivery of written notice of the decision of the Mayor, or his or her duly designated agent. Final determination regarding individual assessments shall be made by the City Council.

14. The impact fees and trip generation rates are set forth in the program. The City council may set forth impact fees and trip generation rates by resolution and modify the same by resolution as allowed by law.
15. The amount of the development impact fee shall be calculated using the methodology contained in the report.
16. A development impact fee shall not exceed a proportionate share of the cost of system improvements determined. Development impact fees shall be based on actual capital improvement costs or reasonable estimates of such costs.
17. A developer shall have the right to elect to pay a project's proportionate share of capital improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of capital improvement costs. The schedule of development impact fees for various land uses per unit of development shall be set forth in the report.

18. Proportionate Share Determination:

- A. All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the city in the provision of capital improvements to serve the new development. The proportionate share is the costs attributable to the new development after the City considers the following:
1. Any appropriate credit, offset or contribution of money, dedication of land, or construction of capital improvements;
 2. Payments reasonably anticipated to be made by or as a result of a new development in the form of user fees, debt service payments, or taxes which are dedicated for capital improvements for which development impact fees would otherwise be imposed; and
 3. All other available sources of funding such system improvements.

VII. ADMINISTRATION OF IMPACT FEE:

1. **Transfer of Funds:** Upon receipt of impact fees, the Mayor, or his or her duly designated agent, shall be responsible for placement of such funds into separate accounts as hereinafter specified. All such funds shall be deposited in interest-bearing accounts, within a banking institution authorized to receive deposits of city funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.
2. **Establishment and Maintenance of Accounts:** The Mayor, or his or her duly designated agent, shall establish separate accounts and maintain records for each such account whereby impact fees collected can be segregated.
3. **Maintenance of Records:** The Mayor, or his or her duly designated agent, shall maintain and keep accurate financial records for each such account that shall show the source and disbursement of all revenues; that shall account for all monies received; that shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the capital improvements program; and that shall provide an annual accounting for each impact fee account showing the source and amount of all funds collected and the projects that were funded.
4. **Review and Modification:** The City Council shall periodically review the development potential of the study area and update the ordinance and Development Impact Fee Report. The City may make any updates as are deemed necessary as a result of (1) development occurring in the prior year; (2) capital

improvements actually constructed; (3) changing facility needs; (4) inflation; (5) revised cost estimates for capital improvements; (6) changes in the availability of other funding for projects; and (7) such other factors as may be relevant.

5. The City shall annually adopt a capital budget.
6. As part of its annual audit process, the City shall prepare an annual report describing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area.

VIII. DEVELOPMENT IMPACT FEE ACCOUNTS

1. There is hereby established a development impact fee account for each type of capital improvement for which a development impact fee is imposed, calculated and collected. The funds of each account shall not be commingled with other accounts or with any other revenues or funds of the city.
2. All development impact fees collected shall be deposited within the development impact fee account which shall be an interest-bearing account and which interest shall be considered funds of the account.

IX. USE OF DEVELOPMENT IMPACT FEE PROCEEDS

1. Development impact fees shall be expended only for the type of capital improvement for which they were imposed, calculated, and collected and shall be expended or committed in accordance with the time limits and procedures established in this ordinance. Development impact fees may be used to pay the principal sum and interest and other costs on bonds, notes or other obligations issued by or on behalf of the city to finance capital improvements identified by city council resolution and the Development Impact Fee Report.
2. Development impact fees shall not be expended to maintain, repair or operate capital improvements.

X. TIME LIMIT ON EXPENDITURES

1. The city shall expend or commit development impact fees deposited in the development impact fee account within five (5) years from the date of deposit into the fund.

XI. CREDITS

1. Any applicant subject to a development impact fee pursuant to this chapter who constructs, escrows money with the city for the construction of or who otherwise contributes funds for capital improvements, as herein defined, may be eligible for a credit for such contribution against the development impact fee otherwise due.

2. Eligibility for, and the amount of, the credit shall be determined by the Mayor or his or her duly designated agent based upon whether the contribution meets capital improvement needs for which the particular development fee has been imposed, as expressed in this chapter, the capital improvements plan, and the development impact fee report of the particular development fee; whether the contribution will substitute for or otherwise reduce the need for capital improvements anticipated to be provided with development impact fee funds; and the value of the contribution. In no event, however, shall the credit exceed the amount of the otherwise applicable development impact fee.
3. Credit applications shall be made on forms provided by the city and shall be submitted at or before the time of development impact fee collection. The application shall contain a declaration of those facts, under oath, along with relevant documentary evidence that qualifies the applicant for the credit.
4. Determination shall be made no more than forty-five (45) days after the Mayor or his or her duly designated agent accepts complete documentation. Any appeal from such determination shall be pursuant to Section XIV of this ordinance.

XII. REFUNDS

1. Once each fiscal year, the city shall make findings identifying all unexpended or uncommitted development impact fees in each development fee account.
2. Except as provided in subsection 3 of this section, upon application of the property owner the city shall refund the portions of any development impact fee which have been on deposit over five (5) years and which are unexpended or uncommitted. Refunds shall be made to the then current record owner or owners of the development project or projects on a prorated basis, together with accrued interest.
3. With respect to fees unexpended or uncommitted within five (5) years of deposit in a development impact fee account, the city may make findings to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. If the city makes such findings, the fees are exempt from the refund requirements.
4. If the city finds that the administrative costs of refunding the unexpended or uncommitted development impact fees exceed the amount to be refunded, the city council, after a public hearing, notice of which has been published in accordance with state law, may determine that the revenues shall be allocated for other capital improvements of the type for which the fees were collected and which serve the development projects.

5. The city may refund the unexpended or uncommitted portions of development fees by direct payment, by offsetting such refunds against other development fees due for development projects on the property, or by other means subject to agreement by the property owner.

XIII. AUDITS

1. The applicant or property owner may request an audit of any development impact fee imposed by the city in order to determine whether the amount of the fee imposed by the city exceeds the amount reasonably necessary to finance capital improvements, the need for which is attributable to new development projects. Upon such request, the city council may retain an independent auditor to conduct an audit to determine whether the development fee is reasonable. Any costs incurred by the city in having an audit conducted by independent auditor shall be recovered from the person who requested the audit. If an audit is requested, the city may require a deposit from the applicant equal to the estimated cost of the audit.

XIV. APPEALS

1. The property owner or applicant may appeal to the city council any decision of a city official with respect to the imposition or calculation of a development impact fee or the amount of any credit or refund due. The burden of proof is on the appellant to demonstrate that the imposition of the fee or amount of the fee or of the credit or refund was not calculated in accordance with the procedures established herein.
2. An appellant protesting the imposition of a development impact fee must file a notice of appeal with the city clerk within ten (10) calendar days following the final decision on the imposition of the fee.
3. An appellant protesting the calculation of a development impact fee or the determination of applicability and calculation of a credit or refund must file a notice of appeal with the city clerk within ten (10) calendar days following the final decision on the calculation of the development impact fee or on the applicability or calculation of a credit or refund. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the city attorney in an amount equal to the development impact fee calculated by the city to be due, the development application shall be processed. The filing of an appeal shall not stay the collection of the fee that is due unless a bond or other sufficient surety has been filed.
4. Failure to appeal within the time limits set forth herein shall be deemed a waiver of the right to appeal.

5. Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality or validity of the imposition of a development impact fee must be filed and service of process effected within ninety (90) days after the date of imposition.
6. Any judicial action or proceeding to attack, review set aside or annul the calculation of a development impact fee or the determination of applicability and calculation of a credit or refund must be preceded or accompanied by a valid protest filed within ninety (90) days after the date of calculation. A valid protest must meet both of the following requirements:
 - A. Tendering the required payment in full or providing satisfactory assurance of payment;
 - B. Serving written notice on the city including:
 1. A statement that the required payment is/has been tendered under protest,
 2. A statement informing the city of the factual elements of the dispute over the calculation of the development impact fee or the determination of applicability and calculation of a credit or refund,
 3. A statement informing the city of the legal theory forming the basis for the protest.
7. Only a party who files a valid protest may file a judicial action to attack, review, set aside, void or annul a decision on the calculation of a development impact fee or the applicability and calculation of a credit or refund. Such judicial action must be filed and service of process effected within one hundred eighty (180) days after the date of calculation.

XV. EXCEPTIONS

Petitions for exceptions to the application of this chapter shall be made in accordance with procedures established by resolution of the city council. If the city council grants an exception in the amount of the impact fee due for a development project under this section, it shall be cause to appropriated from other city funds an amount equal to said reduction in the development impact fee due and such funds shall be allocated to the appropriate development impact fee account.

XVI. AMENDMENT PROCEDURES

1. At least once every year prior to city council adoption of the annual budget and capital improvements plan, staff shall prepare a report to the city council on the subject of development fees and shall incorporate:

- A. Recommendations on amendments, if appropriate, to this chapter, to ordinances imposing development fees, or to resolutions establishing development fee amounts;
 - B. Proposed changes to the capital improvements program identifying capital improvements to be funded by development fees;
 - C. Proposed changes to the boundaries of benefit areas; and
 - D. Proposed changes to development fee rate or schedules.
2. Based upon the report and such factors as the city council deems relevant and applicable, the city council may amend this chapter, specific ordinances imposing development impact fees, and resolutions establishing development impact fee rates or schedules. Changes to the development fee rates or schedules, to the boundaries of benefit area, or to the list of capital improvements to be funded by development fees may be made by resolution. Nothing herein precludes the city council or limits its discretion to amend this chapter, ordinances imposing development fees or resolutions establishing development fee rates or schedules at such other times as may be deemed necessary.

XVII. DEVELOPMENT IMPACT FEES AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENTS

Specific development impact fees imposed by this chapter reflect a development's proportionate share of improvements necessary to meet facility demands created by such development at established city service level standards. As such, development impact fees are additional and supplemental to, and not in substitution of, on-site facility requirements imposed by the city pursuant to zoning, subdivision or other city ordinances, regulations or policies. If said regulations require the provision of off-site improvements that are included in the applicable development impact fee capital improvement plan, the applicant may be eligible for a credit pursuant to Section XI hereof for the cost of such improvement.

XVIII. EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS

This Ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

XIX. BONDING

Funds pledged toward retirement of bonds, revenue certificates, or other obligations of indebtedness for such projects may include impact fees and other city revenues as may be allocated by the City Council.

XX. CONFLICTS

In the event of a conflict between the provisions of this article and the provision of any other ordinance or resolution establishing or amending development fees, the provisions of this article shall govern. Upon the effective date of this Ordinance No 09-01, consisting of Sections I through XX, Ordinance 92-05 shall be repealed in its entirety.


Effective Date: This ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Westmorland held on the 16th day of December 2009.



Henry Graham, Mayor
CITY OF WESTMORLAND

ATTEST:


Sally Traylor, City Clerk

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS
CITY OF WESTMORLAND)

Introduction and 1st Reading

I, Sally Traylor, City Clerk of the City of Westmorland, California, **DO HEREBY CERTIFY**, that the foregoing Ordinance No. 09-01 was approved for 1st Reading by the City Council of the City of Westmorland at a regular meeting held on the 2nd day of December 2009.

Adoption

I, Sally Traylor, City Clerk of the City of Westmorland, California, **DO HEREBY CERTIFY**, that the foregoing Ordinance No. 09-01 was approved for adoption by the City Council of the City of Westmorland at a regular meeting held on the 16th day of December 2009, and that it was so adopted by the following vote:

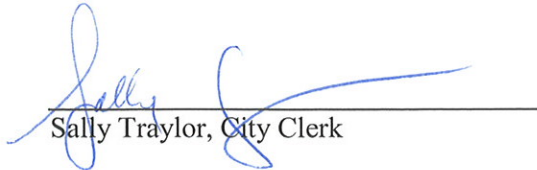
Ayes 5 Noes 0 Absent 0


Sally Traylor, City Clerk

AYES: GRAHAM, BRUMMETT, SANCHEZ, LANDRUM, AND BELTRAN, JR.
NAYES: NONE
ABSENT: NONE
ABSTAIN: NONE

MOTION CARRIED 5-0

Date Posted: December 17, 2009



Sally Traylor, City Clerk

This is a true and correct copy of Ordinance No. 09-01. This Ordinance No. 09-01 was posted pursuant to law.

Appendix "A"

Final Development Impact Fee Report
Dated 12/16/09

Prepared by Howes Weiler and Associates
5927 Balfour Court, Suite 2002
Carlsbad CA 92008
760-929-2288
Mr. Stan Weiler, AICP, Principal
stanweiler@hwplanning.com

Available upon request