CHAPTER 20

SUBDIVISION

(Editor's note—The references throughout this chapter to the Subdivision Map Act shall be interpreted to mean section 11500 et seq., of the Business and Professions Code of the State. For state law as to subdivisions generally, see B&PC sec. 11000 et seq. As to requirement that city adopt subdivision regulations, see B& PC sec. 11525. As to planning commission, see sec. 2-5 to 2-12 of this Code. As to building regulations generally, see ch. 6. As to zoning regulations generally, see ch. 24)

Article I. In General

Article II. Tentative Map

Article III. Final Map

Article IV. Subdividing Existing Lots or Parcels

Article V. Park and Recreation Dedication Fees

Article VI. Development Impact Fees

Article I. In General

20-1 Definitions. All terms used in this chapter which are defined in the Subdivision Map Act shall have the same meaning as ascribed thereto in this act and as the act may hereafter be amended. (Ord. 391)

20-2 Chapter to supplement Subdivision Map Act. The provisions of this chapter shall be in addition to, and shall be considered as supplementing the provisions of the Subdivision Map Act, as contained in the Business and Professions code of the state and all amendments thereto. (Ord. 391)

20-3 Authority of city council. The city council hereby assumes control of the design and improvement of land subdivisions as such power is vested in the city by the provisions of the Subdivision Map Act and amendments thereto. (Ord. 391)

20-4 Compliance with chapter and Subdivision Map act. It shall be unlawful for any person to sell any lands within a subdivision in the city until the subdivider has first conformed to the requirements of the Subdivision Map Act and the provisions of this chapter. Each separate sale or each separate attempt or offer to sell any land from a subdivision without first complying with the provisions of the Subdivision Map Act and the provisions of this chapter shall be deemed a separate offense and shall be punishable as a misdemeanor. (Ord. 391)

20-5 Advisory agency – Planning commission designated. The planning commission of the city is hereby made the advisory agent of the city council as such advisory agency is defined and established by the Subdivision Map act and the power is hereby delegated to the advisory agency to approve,, conditionally approve or disapprove and to report such action on tentative subdivision maps directly to the subdivider (Ord. 391)

20-6 Same – Powers. The advisory agency is hereby given full power and authority to investigate any and all matters pertaining to a proposed subdivision and to make its findings a fact in relation thereto which shall be communicated to the city council. (Ord 391)

20-7 Variances from chapter. It is recognized that situations may arise where it may prove to be impracticable or impossible or unfair and oppressive to the subdivider to require to require literal compliance with all of the requirements of this chapter and that a certain flexibility is necessary.

If the advisory agency, by the unanimous vote of all of its members present at any regular or special meeting, finds and determines that any of the provisions of this chapter should be modified or omitted, thereupon the city council is authorized and empowered to approve any such subdivision map in accordance with such specific findings of the advisory agency.

The city council may take such action as in its discretion it deems proper and may permit the modification or omission of any of the provisions of this chapter and make such conditions as it deems necessary.

Any findings of fact recommending modification or omission of any of the requirements of this chapter shall be set forth in the permanent records of the planning commission and referred to or set forth in the minutes of the city council. (Ord. 391)

20-8 Appeals. Any person aggrieved by a decision of the advisory agency shall have the right of appeal to the city council within twenty days after decision of such agency. (Ord. 391)

20-9 Minimum improvements required. The subdivider shall improve or agree to improve all streets, highways, alleys, ways or easements in the subdivision as a condition precedent to acceptance thereof.

Such improvements shall be installed at lines and grades and in accordance with standard specifications approved by the city engineer and shall include:

a) Grading, etc. Grading, drainage and drainage structures necessary to proper use and to the public safety.

b) Curbs, etc. Curbs and gutters.

c) Parkways. A parkway of not less than sex feet six inches, measured from the inside edge of the curb to the outside edge of the sidewalk.

d) Sidewalks. Sidewalks of a width and quality suitable for the local neighborhood use.

e) Pavement. Pavement of a width and quality suitable for local neighborhood traffic.

f) Water supply. Adequate domestic water supply.

g) Sewage disposal. Sanitary sewer facilities and connections for each lot where in the opinion of the planning commission an outfall sewer is reasonably available.

h) Disturbance of pavement, etc., for public utility, etc., service. Service from public utilities where provided and from sanitary sewers shall be made available for each lot in such manner as will obviate the necessity for disturbing the street pavement, gutter, curb and sidewalk when service connections are made.

i) Trees. Street trees.

j) Street lights. Street lights, where requested by the planning commission.

k) Monuments. Permanent subdivision survey monuments. (Ord. 391)

20-10 Additional improvements. In addition to the minimum improvements referred to in section 20-9, the planning commission shall recommend, and the city council may require, such additional improvements and facilities or such modification in the standards of minimum improvements as special conditions may cause the planning commission to make a special finding of need. (Ord. 391)

20-11 Agreement to complete improvements; security.

a) If improvement work referred to in Section 20-32 is not completed before the final map is approved, the owner of the subdivision shall, as a condition of final map approval, enter into an agreement with the city upon mutually agreeable terms to thereafter complete the off site improvements within a time specified in the agreement at the sub-divider's expense. The security required herein shall include an amount to secure payment to the person or persons responsible for the location and installation of the monuments required by this ordinance.

b) To assure that such improvements are constructed, the subdivider shall furnish security to the city in amounts authorized by Government Code Section 66499.3. If the improvement security authorized by the city is other than bonds furnished by a duly authorized corporate surety, an additional amount shall be included as determined by the city council as necessary to cover the costs and reasonable expenses and fees, including reasonable attorneys' fees which may be incurred by the city in successfully enforcing the obligation secured.

c) The security required by this section shall be of the type authorized by the Government Code Section 66499, as the same now provides or may hereafter be amended, at the option of and subject to the approval of the City Council, including covenants running with the land.

d) The security required by this section and the Subdivision Map Act shall be released as provided in said Act, as the same now provides or may hereafter be amended. (Ord. 576)

20-12 Standards of design – Generally. Except in those cases where the city planning commission determines that the size and shape of the land topographical conditions or proposed land use make compliance therewith impractical, the standards of design shall be as provided in section 20-13. (Ord. 391)

20-13 Same – enumerated. Subject to section 20-12 in reviewing tentative maps preparatory to making a recommendation to the city council, the planning commission shall require:

a) Dedications for streets, etc. Dedications of land for streets, alleys, floodways and easements for:

1) Major streets and thoroughfares for opening or widening as shown on the major street plan or master plan of highways at the widths shown on such plan.

2) Local streets, not less than sixty feet in width or the balance to complete dedication to that width of previously dedicated portions of streets, and located to provide natural drainage with no drainage pockets and adjusted to the topography, minimum number of intersections with major streets or thoroughfares, and blocks not less than six hundred feet in length.

3) Dead-end streets shall be terminated by a turn around area not less than eighty feet in diameter and shall be so arranged that all parts of any dead-end street are visible from the through street from which it runs.

4) Boundary line streets and half streets shall be permitted only when such partial dedications are necessary for the carrying out of the major street plan or when assurances are presented in writing by the owner of the adjoining property of intention to dedicate the remaining parts of the street when such adjoining property is subdivided.

5) Alleys, not less than twenty feet in width in all areas zoned or proposed for industrial commercial or multiple family dwelling use.

b) Easements.

1) For irrigation and drainage channels at such width as the Imperial Irrigation District or the city engineer may indicate.

2) Utilities at the rear of lots as may be necessary to serve the property where alleys are not provided.

c) Pedestrian ways. Pedestrian ways may be required near the middle of long blocks.

d) Parks, etc. Small parks or other public areas, as may be appropriate.

e) Curved streets. Curved streets shall have a center radius of three hundred feet or greater.

f) Street corners. Street corners shall have a minimum twelve-foot curb radius.

g) Street connections. All street connections shall be at approximate right angles.

h) Lots and blocks. Lots and blocks with dimensions suitable to the land uses proposed and in no case less than the minimum sizes specified in the section. The following requirements shall be applicable to lots and blocks:

1) Lot sizes in residential zones shall be not less than sixty feet wide and one hundred twenty feet deep with sixty-five foot minimum width for corner lots.

2) When large lots are proposed, the shapes and building locations may be required to be so established as to permit later practical resubdivision.

3) No reserved lots or strips shall be permitted.

4) Blocks shall ordinarily be two lot depths in width and not over one thousand three hundred feet in length; provided that if blocks are shown at greater width, the planning commission may require easements or other assurances to permit later practical resubdivision. (Ord. 391)

20-14 Preliminary soil report – filing; waiver. Prior to the submission of the final map the subdivider shall file with the city engineer a preliminary soil report, prepared by a state-registered civil engineer, based upon adequate test borings or excavations of every subdivision. The city engineer may waive such soil report if he shall determine that, due to his knowledge of soil qualities of the subdivision, no preliminary analysis is required. (Ord. 403)

20-15 Same – When soil investigation required. If the preliminary soil report indicates the presence of critically expansive soils or other soil problems which, if not corrected, would lead to defects in structures erected thereon, a soil investigation of each lot in the subdivision shall be prepared by a state-registered civil engineer. The investigation shall recommend corrective action which is likely to prevent structural damage to each dwelling proposed to be constructed on the expansive soil. The report shall be filed with the city engineer. (Ord. 403)

20-16 Same – Approval of soil investigation; appeals. The city engineer shall approve the soil investigation if in his judgment he determines that the recommended corrective action is likely to prevent structural damage to each dwelling to be constructed on each lot in the subdivision. Any subdivider aggrieved by the city engineer's determination may appeal therefrom to the board of appeals, provided for in the Uniform Building Code, and the decision of the board shall be final. Any building permit issued for any dwelling proposed to be built in the subdivision shall be conditioned upon the incorporation of the approved recommended corrective action in the construction of each such dwelling. (Ord. 403)

Article II. Tentative Map.

20-17 Procedure prior to preparation and filing. The procedure, when a tentative map is to be filed as provided in this chapter shall be as follows:

a) After noting the requirements of sections 20-13 and 20-19, the subdivider should confer with the engineer or staff of the planning commission before preparing the tentative map of the proposed subdivision. (Ord, 391)

b) Prior to filing of a tentative map, a number shall be obtained from the city engineer upon payment to the city of final map recording fee in an amount established by resolution of the city council. (Ord. 472)

20-18 Preparation; filing generally. The tentative map shall be prepared in accordance with the Subdivision Map Act and the provisions of this article. Eight copies of such tentative map shall be filed with the city planning commission. Such filing shall be prior to the completion of final surveys of streets and lots and before the start of any grading or construction work with the proposed subdivision. (Ord. 391)

20-19 Contents. Tentative maps, filed as provided in this chapter, shall delineate and indicate the following:

1) Title of subdivision and description of property.

2) Name and address of owner and subdivider.

3) Name and address of person preparing map.

4) Approximate acreage.

5) North point.

6) Scale.

7) Date.

8) Boundary line.

9) Location and name of streets.

10) Width of streets.

11) Name, location and width of adjacent streets.

12) Proposed street grades.

13) Street grades beyond tract.

14) Cross-section of proposed street improvements.

15) Width of alleys.

16) Width of easements.

17) Dimensions of reservations.

18) Existing structure.

19) Location of existing and proposed public utilities.

20) Existing sewers.

21) Elevation of sewers at proposed connections.

22) Existing water mains.

23) Existing culverts and drain pipes.

24) Watercourses.

25) Land subject to overflow, inundation or flood hazard.

26) Railroads.

27) Lot lines and approximate dimensions.

28) Approximate radius of curves.

29) Setback lines.

30) Lands and parks to be dedicated for public use.

31) Contours at two-foot intervals.

32) Proposed land use:

a) Single family.

b) Multi-family.

c) Business.

d) Industrial.

33) Name of adjoining subdivision.

34) Existing use of property immediately surrounding the tract.

35) Land registered. (Ord. 391)

20-20 Reports, etc, to accompany. A tentative map, filed as provided in this chapter, shall be accompanied by reports and written statements from the subdivider giving essential information regarding the following matters:

a) Development plan. Subdivision development plan.

b) Water supply. Source, quality and an estimate of available quantity of domestic water supply.

c) Street improvements, etc. Type of street improvements and utilities which the subdivider proposes to install.

d) Sewage disposal. Proposed method of sewage disposal.

e) Storm sewers. Proposed storm water sewer (grade and size.

f) Covenants. Protective covenants to be recorded.

g) Trees. Proposed tree planting. (Ord. 391)

20-21 Distribution of copies. Upon the filing with the city planning commission of the required number of copies of a tentative map, as provided in this article, one copy thereof shall be immediately forwarded to the city planning commission.

If a state highway is involved, a copy of the map shall be forwarded to the district engineer of the division of highways of the state department of public works.

The city planning commission shall cause to be certified upon its official filed copy of the tentative map a statement as to the above transmittals, giving the date in each case. (Ord 391)

20-22 Report of the planning commission. Within thirty days after a tentative map application has been determined to be complete, as provided in this article and the Subdivision Map Act, the planning commission shall conduct a public hearing and recommend approval or denial of the subdivision based on the merits of the subdivision to the City Council.

The Planning Commission shall recommend denial and the City Council shall deny the application for subdivision if the subdivision does not meet all requirements of this ordinance, any applicable city rule of if any of the following findings are made:

(a) That the proposed land division is not consistent with applicable general and specific plans.

(b) That the design or improvement of the proposed land division is not consistent with applicable general and specific plans.

(c) That the site of the proposed land division is not physically suitable for the type of development.

(d) That the site of the proposed land division is not physically suitable for the proposed density of the development.

(e) That the design of the proposed land division or proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure to fish or wildlife or their habitat.

(f) That the design of the proposed land division or the type of improvements are likely to cause serious public health problems.

(g) That the design of the proposed land division or the type of improvements will conflict with easements, acquired by the public at large, for access through, or use of, property within the proposed land division.

A subdivision may be approved if it is found that alternate easements for access or for use will be provided and that they will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by order of a court of competent jurisdiction.

Notwithstanding subsection (e) above, a tentative map may be approved if an environmental impact report was prepared with respect to the project and a finding was made, pursuant to the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report. (Ord. 679)

20-22.1 Planning Commission Duties. The Planning Commission as a recommending body is authorized to carry out the following actions with reference to processing of a subdivision:

(a) After the completion of a public hearing on the proposed subdivision, recommend to the City Council, approval, conditional approval, or disapproval in whole or in part of tentative maps filed pursuant to this Chapter and/or Subdivision Map Act. The Planning Commission shall take such action within fifty (50) days (or any longer period hereinafter prescribed by state law) after the filing of the tentative map with the Planning Department. This time limit may be longer if necessary to comply with other laws including, but not limited to CEQA.

(b) The Planning Department shall forward the Planning Commission recommendation to the City Council. This City Council shall then schedule and conduct a public hearing. (Ord. 679)

20-22.2 Action by the City Council. The City Council shall have the following options:

(a) Deny the subdivision should it make any of the findings under section 20-22.

(b) Deny the subdivision if it determines that the proposed subdivision is not compatible with surrounding zoning, or is detrimental to the surrounding property (or the city in general), or represents incompatible land uses, or may cause substantial adverse environmental consequences.

(c) Approve the subdivision as recommended by the Planning Commission along with findings of approval and conditions.

(d) Continue the public hearing on the matter to a date/time certain for the purpose of having additional information made available to the City Council.

Any decision made by the City Council shall be final with no further appeal to an administrative body, except as provided by law. (Ord. 679)

20-23 Submission to state real estate commission. As soon as the planning commission has approved, conditionally approved or disapproved a tentative map, filed as provided in this article, a copy thereof shall be sent by the planning commission to the real estate commissioner of the state, together with a statement of the action taken thereon by the planning commission. (Ord. 391)

Article III. Final Map

20-24 Preparation. After approval of a tentative map, the subdivider may cause a final map to be prepared in accordance with the completed survey of the subdivision and in substantial compliance with the approved tentative map and in full compliance with the Subdivision Map Act and this chapter. (Ord. 679)

20-25 Contents. Final maps filed, as provided in this article, shall delineate and indicate the following:

1) If more than three sheets are used, an index showing entire subdivision, with lots numbered consecutively.

2) Title, name of tract, date, north point and scale.

3) Description of land included.

4) Location and names, without abbreviations, of all:

a) Proposed streets and alleys.

b) Proposed public areas and easements.

c) Adjoining streets.

5) Dimensions in feet and decimals of a foot.

6) Dimensions of all lots.

7) Center line data including bearings and distances.

8) Radius, tangent arc and central angle of curves.

9) Suitable primary survey control points.

10) Location of all permanent monuments.

11) Ties to and names of adjacent subdivisions.

12) Ties to any city or county boundary lines involved.

13) Location of all setback lines.

14) Required certificates.

15) Net acreage of all lots of one acre or more. (Ord. 391)

20-26 Form. In the preparation of the final map, as provided in section 20-24, compliance shall be had with the following requirements:

a) Size, material, etc. The requirements as to sizes, material and related matters shall be as follows:

1) The final map shall be clearly and legibly delineated upon tracing cloth of good quality.

2) All lines, letters, figures, certificates, acknowledgements and signatures shall be made in black waterproof India ink, except that affidavits, certificates and acknowledgements may be legibly stamped or printed upon the map with black opaque ink.

3) The size of each sheet shall be eighteen by twenty-six inches.

4) A marginal line shall be drawn completely around each sheet leaving an entirely blank margin of one inch.

5) The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this end.

6) Each sheet shall be numbered, the relation of one sheet to another clearly shown and the number of sheets used shall be set forth on each sheet.

7) The tract number, scale, north point and sheet number shall be shown on each sheet of the final map.

b) Title sheets. The requirements as to title sheets shall be as follows:

1) Below the title shall be a subtitle consisting of a general description of all property being subdivided, by reference to deeds, subdivisions or to sectional surveys.

2) References to tracts and subdivisions shall be spelled out and worded identically with original records, with complete reference to proper book and page of the record.

3) The title sheet shall show in addition the basis of bearings.

4) Maps filed for the purpose of reverting subdivided land to acreage shall be conspicuously marked under the title "The purpose of this Map is a Reversion to Acreage".

c) Certificate forms. Forms for certificates shall be as required by the Subdivision Map act and this chapter.

d) Surveying data generally. Generally, the requirements as to surveying date for lots shall be as follows:

1) Sufficient date shall be shown to determine readily the bearing and length of such line.

2) Dimensions of lots shall be the net dimensions.

3) No ditto marks shall be used.

4) Lots containing one acre or more shall show net acreage to nearest hundredth.

e) Further provisions as to surveys. Further, in reference to surveys and surveying, the following provisions shall apply:

1) There shall be shown the center line of all streets, length, tangent, radius and central angle or radial bearings of all curves; and the bearing of radial lines, to each lot corner of a curve, the total width of each street, the width of the portion being dedicated and the width of existing dedications, and the width of each side of the center line, also the width of rights or way of railroads, flood control or drainage channels and any other easements appearing on the map.

2) Surveys in connection with the preparation of subdivision maps, as provided in this chapter, shall be made in accordance with standard practices and principles for land surveying.

3) A traverse of the boundaries of the subdivision and all lots and blocks shall close within a limit of error on one foot in ten thousand feet of perimeter.

f) Easements. In reference to easements, the following provisions shall apply:

1) The final map shall show the center line date, width and side lines of all easements to which the lots are subject.

2) If the easement is not definitely located of record, a statement as to the easement shall appear on the title sheet.

3) Easements for storm drains, sewers and other purposes shall be denoted by broken lines.

4) Distances and bearings on the side lines of the lots which are cut by an easement shall be shown as to indicate clearly the actual length of the lot line.

5) The width of the easement and the lengths and bearings of the lines thereof and sufficient ties to locate the easement definitely with respect to the subdivision shall be shown.

6) The easement shall be clearly labeled and identified and if already of record, proper reference to the records given.

7) Easements being dedicated shall be so indicated in the certificate of dedication.

g) Existing monuments, etc. In reference to existing monuments and related matters, the following provisions shall apply:

1) The final map shall show clearly what stakes, monuments or other evidence was found on the ground to determine the boundaries of the tract.

2) The corners of adjoining subdivision or portions thereof shall be identified and ties shown.

h) Street surveys. Wherever the county surveyor or city engineer has established the center line of a street or alley, that date shall be considered in making the surveys and in preparing the final map; and all monuments found shall be indicated, and proper references made to field books or maps of public records, relating to the monuments. If the points were reset by ties, that fact shall be stated.

i) City or county boundaries. The final map shall show city and county boundaries crossing or adjoining the subdivision, which boundaries shall be clearly designated and tied in.

j) Numbering of lots. The lots shall be numbered consecutively, commencing with the number one, with no omissions or duplications; provided, that where the subdivision is a continuation of or an addition to an existing subdivision, the lot number may commence with the number immediately following the last or highest number of such existing subdivision and in all other respects shall conform with the preceding requirements.

k) Showing complete lot. Each lot shall be shown entirely on one sheet. (Ord. 391)

20-27 Statements, etc., to accompany. The final map shall be accompanied by:

a) Traverse and work sheets. Traverse sheets and work sheets showing the closure within allowable limits of error, or the exterior boundaries and of each irregular block and lot of the subdivision.

b) Plans, etc., for improvements. Plans and specifications of the proposed improvements together with the necessary bonds or guarantees as provided herein.

c) Covenants. A copy of the protective covenants to be recorded.

d) Memorandum. A memorandum in duplicate showing:

1) The total area of the subdivision.

2) The total area in streets.

3) The total area in lots.

e) Parks, etc. The area in parks, school sites or other lands offered for dedication or reserved for future public or quasi-public use. (Ord. 391)

20-28 Filing with city clerk. Fifteen copies of the final map, prepared as required in sections 20-24 and 20-26, shall be filed with the city clerk prior too the submission of such final map to the city council. (Ord. 391)

20-29 Submission to city engineer. After receipt of the report of the planning commission approving or conditionally approving the tentative map, the subdivider may submit to the city engineer the original final map and a duplicate tracing thereof made on good tracing cloth. (Ord. 391)

20-30 Examination and approval by city engineer. After issuance of a receipt for a final map, an engineer designated by the City Council shall examine it as to sufficiency of affidavits and acknowledgements, correctness of surveying date, mathematical date and computations and such other matters as require checking to insure compliance with the provisions of the Subdivision Map Act and this chapter.

If the final map is found to be in correct form, and the matters shown thereon are sufficient, an engineer designated by the City Council shall endorse his approval thereon and transmit it to the City Council together with plans and specifications of proposed improvements and such other matters as are required to enable the City Council to consider the final map or return the final map to the subdivider together with a statement setting forth the ground for its return.

The fee for examining a final map shall be established by resolution of the City Council; provided, that where a large amount of checking or field surveys, or both, are necessary to check the accuracy of the data shown on the final map, an additional fee estimated by an engineer designated by the City Council and approved by the City Council to be sufficient to cover the actual cost shall be deposited with the City Clerk of the City of Imperial; provided further, that any balance shall be returned to the subdivider or in case the fee is not sufficient, subdivider shall pay the difference between the estimated and actual cost of examination. (Ord. 472)

20-31 Completion of map. The final map shall be completed in accordance with the Subdivision Map act and this chapter. (Ord. 391)

20-32 Completion or agreement to complete streets, etc., pre-requisite to approval. The subdivider shall improve or agree to improve all streets, highways, alleyways or easements in the subdivision as provided in sections 20-9 and 20-10 as a condition precedent to the approval of the final map. (Ord. 391)

Article IV Subdividing Existing Lots or Parcels

20-33 Compliance with article. When an owner or subdivider desires to consolidate, to divide or rearrange one or more existing lots or parcels into not more than four parcels, or as otherwise provided by section s11535 and 11575 to 11580 of the state Business and Professions Code, and other applicable provisions of the Subdivision Map Act, it shall be done in the manner set forth in this article. (Ord. 437)

20-34 Tentative parcel map. An acceptable tentative parcel map, showing the proposed land division, shall be prepared by a registered civil engineer or licensed land surveyor, and filed with the city engineer. The map shall be of a size and form and shall contain necessary information as prescribed by the city engineer. A preliminary title report for the property being split shall be submitted at the time of filing. (Ord. 437)

20-35 Improvements and dedication.

a) Except as hereinafter provided, the owner or subdivider shall offer for dedication additional streets, alleys, public ways and easements, as are required for conformance with the city's circulation element and the existing or projected local street system.

b) As a condition precedent to the approval of a parcel map, the owner or subdivider shall agree to construct improvements in or along the parcel frontage upon all existing or proposed public streets and ways as reasonably required for subdivision. A final parcel map may not be approved by the city engineer until the required improvements have been satisfactorily constructed or until an adequate security, as approved by the city attorney and in an amount determined by the city engineer for the estimated cost of the work, has been posted with the city.

c) Extraordinary conditions may make construction of certain improvements impracticable. In extreme circumstances, the city may grant conditional exception to be made only upon written statement of the owner, citing the extraordinary or extreme circumstances and shall be granted only by the City Council, subject to such conditions as they may impose. (Ord. 437)

20-36 Final parcel map.

a) Upon completion of requirements for the tentative parcel map and improvements, the owner or subdivider may proceed with the processing of a final parcel map of the land division. The map shall be of a size and form prescribed by the city engineer, shall comply with the provisions of sections 11676 to 11580 of the Subdivision Map Act, shall be based upon a filed survey showing monuments found and set, and shall include other data as required by the city.

b) Upon approval of the final parcel map by the city engineer, the owner's or subdivider's engineer or land surveyor shall file the map with the county recorder. He shall pay the recording fee and return an acceptable reproducible, duplicate copy of the recorded map on linen tracing cloth or polyester base film, one cloth black print and two blue line prints to the city for filing. (Ord. 437)

20-36.1 Parcel map waiver procedure. Upon compliance with the provisions hereinafter set forth and issuance to the applicant of a Parcel Map Waiver Certificate, no parcel map need be filed or recorded for a proposed subdivision creating no more than four parcels, each parcel of which abuts and has approved access to a maintained public street or highway and for which no improvements are required as determined by the Director of Public Works/Planning. (Ord. 551)

20-36.2 Subdivisions of four or fewer parcels. Unless a Parcel Map Waiver Certificate has been previously issued, no person shall create a subdivision of four or fewer parcels except in accordance with a parcel map approved pursuant to this Chapter and the Subdivision Map Act and filed in the office of County Recorder. (Ord. 551)

20-36.3 Application for Parcel Map Waiver Certificate – contents. The applicant for a Parcel Map Waiver Certificate shall file along with his application for same a tentative map drawing and such other information as may be required by the Director of Public Works/Planning. The application fee for said Parcel Map Waiver Certificate shall be established by resolution of the City Council. All such applications shall be accompanied by the applicant's Environmental Review. (Ord. 551)

20-36.4 Assignment of certain responsibilities regarding parcel Map Waiver Certificates to the Public Works/Planning Director. The responsibilities of the City Council pursuant to Section 66428 of the Subdivision Map act are hereby assigned to the Public Works/Planning Director with respect to the waiver of the parcel map requirements of the City Ordinances in connection with those parcels described in Section 20-36.1 hereinabove. (Ord. 551)

20-36.5 Water/Wastewater certification. No Parcel Map Waiver Certificate shall be issued unless the Director of Public Works/Planning determines adequate water and wastewater facilities are available to each lot. (Ord. 551)

a) The Director of Public Works/Planning is authorized and directed to carry out duties assigned to him by this Chapter including but not limited to the following:

1) Approve or disapprove the application for a Parcel Map Waiver Certificate and report, as provided in this chapter, his approval, or disapproval directly to the subdivider.

b) The Director of Public Works/Planning may prescribe; subject to the approval of the City Council such additional rules and regulations as are necessary or advisable with the respect to the form and content of tentative parcel maps required by this Chapter.

20-36.7 Action of the Director of Public Works/Planning. Within ten working days after the application for Parcel Map Waiver Certificate has been filed, the Director of Public Works/Planning shall transmit copies of said application together with accompanying documentation and information to such public agencies and public and private utilities as the Director Of Public Works/Planning determines may be concerned. Each of the public agencies and utilities may, within ten working days after the application and map have been sent to such agency, forward to the Director of Public Works/Planning a written report of its findings and recommendations thereon. (Ord. 551)

10-36.8 Consideration of Application for Parcel Map Waiver Certificate and Tentative Parcel Map – Notice of Decision.

a) Time for Consideration. Within fifty (50) calendar days after an application for Parcel Map Waiver Certificate has been filed, the Director of Public Works/Planning shall approve or disapprove the issuance of such Parcel Map Waiver Certificate. The time limit specified in this paragraph may be extended by mutual consent of the applicant and the Director of Public Works/Planning. If the Director of Public Works/Planning has not approved the application within the time period specified and a continuance of said period has not been agreed upon, the application shall be deemed denied. If the application for issuance of the Parcel Map Waiver Certificate is disapproved, the reasons therefore shall be stated in the notice of disapproval.

b) Notice. The subdivider shall be informed of the final decision of the Director of Public Works/Planning by written notice. Notice shall be deemed to have

been given upon deposit of the notice in the United States mail, postage thereon repaid. (Ord. 551)

20-36.9 Disapproval of Application for Parcel Map Waiver Certificate. The Director of Public Works/Planning shall make written findings on all items listed hereinbelow. The Director of Public Works/Planning shall not approve the issuance of a Parcel Map Waiver Certificate until he has made all of the following findings:

a) The proposed division of land complies with the City's General and Specific Plans.

b) The improvement and design of the proposed division of land is consistent with the applicable general and specific plans.

c) Subject to the provisions contained in Section 20-36.1 above, the design of the subdivision and/or the proposed improvements are consistent with other City requirements.

d) The proposed division of land complies with State and City requirements regarding appropriate improved public roads.

e) The proposed division of land complies with State and City requirements regarding wastewater and water supply availability.

f) The proposed division of land complies with State and City requirements regarding environmental protection. (Ord. 551)

20-36.10 Appeal to Planning Commission.

a) Where the subdivider is dissatisfied with any action of the Director of Public Works/Planning with respect to the application for Parcel Map Waiver Certificate he may appeal to the Planning Commission as provided in Section 66452.5 of the Subdivision Map Act. Notice of any hearing by the Planning Commission shall be given in the manner provided for consideration of tentative maps by the Planning Commission.

b) Any interested party may likewise appeal to the Planning Commission and the City Council from any decision of the Director of Public Works/Planning or Planning Commission made relevant to the provisions of Government Code Sections 66473.5, 66474, 66474.5 and 66428. Any such appellant shall be subject to the same notice and rights and rights regarding testimony as applied to the subdivider under Section 66452.5 of the Government Code.

c) The Planning Commission and City Council prior to the granting of such appeal or any other manner approving or conditionally approving the issuance of said Parcel Map Waiver Certificate shall make findings as to each item described in Section 20-36.9 hereof. (Ord. 551)

20-37 Processing; fees. Parcel splits shall be processed through the Planning Commission and City Council in the manner prescribed for subdivisions. The fees for recording and examination and approval of the map shall be established by resolution of the City Council; provided, that where a large amount of checking or field surveys, or both, are necessary to check the accuracy of the data shown on the maps, an additional fee estimated by an engineer designated by the City Council and approved by the City Council to be sufficient to cover the actual cost shall be deposited with the City Clerk of the City of Imperial; provided further, that any balance shall be returned to the subdivider or in the case the fee is not sufficient, the subdivider shall pay the difference between the estimated and actual cost of examination. (Ord. 472)

20-38 Compliance prerequisite to issuance of building permits. The building official shall not issue permits for the erection of any structure upon lots or parcels not complying with this article. (Ord. 437)

20-39 Additional parcel splits. Parcel splits shall be considered subdivisions for this purpose and the owner or subdivider shall comply with the applicable portion of this Code or other ordinances of the City for each new parcel created in excess of the number of original parcels. (Ord. 437)

20-40 Appeal to City Council. When the applicant is dissatisfied with any action of the city engineer or planning commission with respect to the tentative parcel or the kind, nature and extent of the improvements required, he may appeal to the City Council as provided in section 11552 of the Subdivision Map act. (Ord. 437)

Article V. Park and Recreation Dedication Fees

(This Article repealed by Ordinance 658, Development Impact Fees, section 20-52 through 20-71 of this chapter)

Article VI Development Impact Fees

20-52 Title. This chapter shall be known and cited as “Development Impact Fees”.

20-53 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 grown 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.

20-54 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 storage, treatment or distribution of water; for the collection, treatment, reclamation or disposal of sewage; for the collection and disposal of stormwaters 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, harbors, ports, 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 improvements projects.

6. "Collection" means the point at which the development impact fee due 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 if the imposition of development fees could lawfully have been imposed at such time 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 one or more habitable rooms designed occupied or intended for occupancy as separate living quarters. Each dwelling unit contains only one kitchen. A manufactured home or mobile home is a dwelling unit.

12. "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.

13. "Manufactured/ mobile home" means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 42 U.S.C. 5401, et seq.

14. "Modular buildings" means 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.

15. "Nonresidential development project" means all development other than a residential development project.

16. "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.

20-55. 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. Library Impact Fee

3. Park Impact Fee

4. Law enforcement Impact Fee

5. Fire Protection Impact Fee

6. Circulation Impact Fee

20-56 Exemptions. The provisions of this chapter do not apply to:

1. Taxes or special assessments levied by the city;

2. Fees for processing development applications 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 and ready for occupancy within (2) years of its destruction;

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 manufacture/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 clubhouse, unless it can be clearly demonstrated that the use creates a significant 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 no so claimed shall be deemed waived by the applicant. Application for exemption shall be submitted to and determined by the City Manager, or his or her duly designated agent, within ninety (90) days. Appeals of the City Manager's, or his or her duly designated agent, determination shall be made under the provisions of Section 20-65 of this Ordinance entitled "APPEALS".

20-57 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:

Approval of this development project is conditioned upon payment of all applicable development fees in the manner provided in the City of Imperial Municipal code.

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.

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 on a pro rata basis for each dwelling unit prior to 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 shall be collected prior to the issuance of a building permit.

5. Development impact fee amounts and fee benefit areas shall be established and may be amended from time to time by city council resolution.

6. A manufactured/mobile 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 City shall calculate the amount of the impact fee due for each building permit, or manufactured/mobile 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.

8. 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.

9. 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, improvements, 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.

10. If the development for which a building permit or manufactured/mobile home installation permit, is sought contains a mix of uses, the impact fee will be calculated for each type of development.

11. Certification: Prior to making an application for a building permit or manufactured/mobile 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.

12. 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 assessments of development impact fees may be made by application to the City Manager, or his or her duly designated agent, prior to receiving building permits, manufactured/mobile home installation permits, or other necessary approvals from the City. The City Manager, or his or her duly designated agent, shall evaluate such individual assessments under the guidelines provided for in Section 12.D of this Chapter. If the guidelines are met the individual assessment shall be approved by the City Manager, 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 City Manager, 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 City Manager, 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 ate said decision becomes final.

D. The City Manager, 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 development 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 City Manager, or his or her duly designated agent, 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 City Manager, or his or her duly designated agent. Final determination regarding individual assessments shall be made by the City Council.

13. 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.

14. The amount of the development impact fee shall be calculated using the methodology contained in the report.

15. 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.

16. 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 as set forth in the report.

17. 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.

20-58 Administration of Impact Fee:

1. Transfer of Funds: Upon receipt of impact fees, the City Manager, 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 City Manager, 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 City Manager, 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. Development impact fees shall only be spent for the category of system improvements for which the fees are collected and either within or for the benefit of the service area in which the project is located.

5. Review and Modification: Unless the City Council deems some other time period is appropriate, the City shall at least once every five (5) years, commencing from the date of the original adoption of the development impact fee ordinance, review the development potential of the 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 projects; and (7) such other factors as may be relevant.

6. The City shall annually adopt a capital budget.

7. 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.

20-59 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.

20-60 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.

20-61. 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.

20-62 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, agrees to participate in an assessment district 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 City Manager 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 City Manager or his or her duly designated agent accepts complete documentation. Any appeal from such determination shall be pursuant to section 20-65 of this ordinance.

20-63 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 charge. 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.

20-64 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 auditory to conduct an audit to determine whether the development fee is reasonable. Any costs incurred by the city in having an audit conducted by an 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.

20-65 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 am 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 ((0) 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.

20-66 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 appropriate 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.

20-67 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 rates or schedules.

2. Based upon the report and such other 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 areas, or to the list of capital improvements to be funded by development fee 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.

20-68 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 20-62 hereof for the cost of such improvement.

20-69 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.

20-70 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.

20-71 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, Article V. Park and

Recreation Dedication Fees, also known as Ordinance No. 554, consisting of sections 20-41 through 20-51 of this chapter shall be repealed in its entirety. (Ord. 658)