

ORDINANCE NO. 29-06 N.S.

AN URGENCY ORDINANCE OF THE CITY OF RICHMOND UPDATING THE WEST CONTRA COSTA SUBREGIONAL TRANSPORTATION MITIGATION PROGRAM (STMP) AND PROVIDING FOR THE IMMEDIATE INTERIM AUTHORIZATION FOR STMP FEES

WHEREAS, Measure C, the Contra Costa County half-cent sales tax measure adopted in 1988 for transportation projects and program requires the Contra Costa Transportation Authority (CCTA or Authority) to:

- Develop a program of regional traffic mitigation fees, assessments, or other mitigations, as appropriate, to fund regional and subregional transportation projects, as determined in the Comprehensive Transportation Plan of the Authority.
- Consider such issues as jobs/housing balance, carpool and vanpool programs, and proximity to transit service in the establishment of the regional traffic mitigation program.
- Implement the development mitigation program with the participation and concurrence of local jurisdictions in determining the most feasible methods of mitigating regional traffic impacts while taking existing regional traffic impact fees into account.

WHEREAS, Measure J, the successor to Measure C, was passed by the voters in Contra Costa County in November 2004 to be effective in 2009 and also contains a Growth Management component; and

WHEREAS, West Contra Costa County traffic is heavily-impacted by through traffic from other regions in Contra Costa County as well as other counties; and West Contra Costa County is providing congestion relief through local fees collected to mitigate traffic on regional routes and through improved transit service; and

WHEREAS, the West Contra Costa Transportation Advisory Committee (WCCTAC) is comprised of elected officials from the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo and the agencies AC Transit, BART, WestCAT and Contra Costa County; is governed by a Joint Exercise of Powers Agreement (JPA); and has been in existence since 1990; and

WHEREAS, WCCTAC is empowered to coordinate and administer fee revenues for regional transportation improvements; and

WHEREAS, through the aegis of WCCTAC, the West County jurisdictions and Contra Costa County have reached consensus on the STMP Update, as described in the Master Cooperative Agreement By and Among the Contra Costa Transportation Authority, the Cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo, the County of Contra Costa and the West Contra Costa Transportation Advisory Committee for the 2006 Subregional Transportation Mitigation Fee Program (“Cooperative Agreement”), and are adopting this Ordinance to implement the collection of fees relative to the STMP in order to provide funding for regional transportation improvements necessary for each jurisdiction; and

WHEREAS, the City desires to assure that new development in the City/ contributes to such needed regional improvements based on the development’s proportionate contribution to the need for new or improved regional circulation and transit improvements; and

WHEREAS, WCCTAC’s consultant, TJKM Transportation Consultants, has prepared a report and study and other documents, which are attached as Exhibit A, and incorporated by reference herein, which outline the basis for the updated STMP fee; and

WHEREAS, the aforementioned report describes the regional transportation improvements that will be necessary in the City and the other member jurisdictions because of new development

expected under the adopted general plans of member jurisdictions, estimates the cost of acquiring property for and building regional capital improvements, and sets forth the fees necessary to fund such necessary and vital improvements; and

WHEREAS, the General Plan of the City requires new developments to pay their fair share of impacts to existing public facilities and upgrading or constructing new public facilities and that the City work with other jurisdictions in order to establish and utilize regional funding mechanisms, including fees on new development, to fund regional transportation improvements; and

WHEREAS, in adopting the updated transportation impact fee described herein, the City has found the fee to be consistent with its General Plan and existing ordinances; and

WHEREAS, Measure C also requires that all Contra Costa County jurisdictions participate in the regional transportation mitigation program, and jurisdictions that are not participating in such a program are at risk of losing their Measure C (and subsequently Measure J) local street maintenance and improvement funds; and

WHEREAS, the Mitigation Fee Act provides that the legislative body of a local agency, to protect the public health, welfare and safety, may adopt an urgency measure as interim authorization for a fee or charge, or increase in a fee or charge, upon a four-fifths vote of the legislative body for adoption; and

WHEREAS, the lack of funding for the transportation projects described in Section V of this Ordinance poses a current and immediate threat to the public health, welfare and safety; and

WHEREAS, adoption and approval of the STMP fee are also exempt from CEQA pursuant to Public Resources Code § 21080(b)(8)(D) and 14 Cal. Code Regs. § 15273(a), since they constitute the modification, restructuring or approval of a fee or charge needed to obtain funds for capital projects that are necessary only to maintain service within existing service areas within the City, pursuant to the findings set forth herein.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF RICHMOND DO ORDAIN AS FOLLOWS:

SECTION 1 - TITLE

The Ordinance shall be known as the *Urgency Ordinance Updating the West County Subregional Transportation Mitigation Program Fees*

SECTION II – PURPOSE

The purpose of the STMP Update and the STMP fee set forth in this Ordinance is to meet the intent of Measure C/Measure J by levying a fee on new development to mitigate the impacts of new trips generated by that development. Further, the purpose of the STMP fee set forth in this Ordinance is to raise funds for regional transportation projects in West County.

SECTION III – FINDINGS

- A. The STMP fee is required solely to provide infrastructure capital projects needed for health and safety reasons (traffic safety, improved commute and traffic conditions) to mitigate impacts as a direct result of the projects, since growth places a greater burden on the roadway and transit systems.
- B. The STMP fee will raise funds for eleven projects: Richmond Intermodal – Hercules Passenger Rail Station and capital improvements along the Corridor Station; I-80 interchanges at San Pablo Dam Road and Central Avenue and on Highway 4 at Willow Avenue; Capitol Corridor improvements; ferry service to San Francisco from Richmond and/or Hercules/Rodeo; BART access and/or parking improvements; Bay Trail gap closure; San Pablo Dam Road improvements in downtown El Sobrante; north Richmond road connection project; San Pablo Avenue corridor improvements; Hercules transit

center relocation, and; Del Norte area transit oriented development project public improvements. A detailed description of the projects can be found in Section V.

- C. The total cost of funding the unfunded portion of the eleven projects is approximately \$248,992,000 in 2005 dollars. The Nexus Analysis determined the amount of eligible funding to be collected through the STMP program.
- D. The nexus findings, in conformance with Government Code § 66000 et seq. can be found in the “2005 Update of the Subregional Transportation Mitigation Program (STMP)” prepared by TJKM Transportation Consultants for WCCTAC. Two copies of the Update are on file with the City Clerk and also attached as Exhibit A.
- E. A five step process aided in the design of the STMP Update which included:
- Projecting the amount of the new development using ABAG’s Projections 2003;
 - Specifying the transportation improvements needed to accommodate growth;
 - Evaluating the relationship between the improvements, the share of funding from new development, and the impacts of new trip generation;
 - Allocating the costs across land use types (residential, retail, office, industrial, senior housing, hotel, storage facility, church, hospital); and;
 - Preparing fee schedules and implementation documents.
- F. After considering the 2005 Update of STMP prepared by TJKM Transportation Consultants, the testimony received at a noticed public hearing, the agenda statements, the General Plan, and all correspondence received (together, the “Record”), the City Council approves and adopts the 2005 Update of the STMP and incorporates such report herein.
- G. Adoption of the STMP fee set forth in this Ordinance, as it relates to development within the City, is intended to obtain funds for capital projects necessary to maintain service within existing City service areas. The City currently already contributes to the provision of necessary regional transportation improvements, and the STMP fee set forth in this Ordinance will be used to maintain current service levels. Accordingly, this fee, as it relates to development within the City, is not a “project” within the meaning of the California Environmental Quality Act. (Pub. Res. Code § 21080(b)(8)(D).)
- H. The Record establishes:
- That there is a reasonable relationship between the use of the STMP fee set forth in this Ordinance (funding for transportation capital infrastructure projects) and the type of development projects on which this fee is imposed in that all development in the City—both residential and non-residential—generates or contributes to the need for the projects listed in Section V of this Ordinance; and
 - That there is a reasonable relationship between the need for the projects listed in Section V of this Ordinance and the type of development projects on which this fee is imposed in that new development in the City—both residential and non-residential—will generate persons who live, work, shop, travel to and from, commute to and from, and visit the City and who, therefore, generate or contribute to the need for the projects listed in Section V of this Ordinance; and
 - That there is a reasonable relationship between the amount of the fee set forth in this Ordinance and the cost of the projects listed in Section V of this Ordinance or portion of such projects attributable to the development on which this fee is imposed in that such fee is calculated based on new development using ABAG’s Projections 2003, the total cost of the projects listed in Section V, evaluation of the share of funding from new development, and the allocation of costs across land use types.
- I. In order to maintain the public health, safety and welfare of the citizens of the City, especially as it relates to new development within the City, it is necessary to pass this urgency ordinance putting the STMP fee immediately into effect, pursuant to the

Mitigation Fee Act, Government Code Section 66017(b), and based on the following findings:

- The 2005 Update of STMP prepared by TJKM Transportation Consultants concluded that the overall residential growth for the WCCTAC area is estimated at 17,910 households, representing a 20.3 percent increase for the 25 year period. Moreover, employment is expected to grow more rapidly than residential development. In addition, the 2005 Update of STMP concluded that, using standard available trip generation rates, the total increase in peak hour trips in the a.m. period is expected to be 28,571. The 2005 Update of STMP identifies the projects described in Section V as improvements needed due to increased congestion attributable to projected growth in population and employment in the WCCTAC area. The public health, safety, and welfare are compromised by the delay in construction of the projects described in Section V due to insufficiency of funds for such construction, and a 60-day delay in implementing the collection of the 2006 STMP fee will further delay construction of the projects.
- Increased traffic congestion contributes to air pollution and decreased air quality, which in turn, negatively affects the health of persons living and working in the area, including children and infants. Any delay in the construction of the improvements will detrimentally affect the public welfare and health because of increased traffic congestion in the affected areas, and increased air pollution as a result of the traffic congestion.
- Many of the projects described in Section V will affect access for individuals with disabilities to local and regional transportation facilities. Failure to construct the improvements in a timely fashion will detrimentally affect the public health and safety because of decreased access to transportation facilities and conditions that violate the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.) and California disability law.
- The adoption of the STMP fee on an interim basis is necessary to protect the public health, safety and welfare, by assuring the earliest practical construction of the projects described in Section V.

SECTION IV – FEES

A. Levy of the Fee and Fee Structure. In order to fund the program and projects stated herein, it is agreed that the following developer fee schedule shall be implemented effective immediately upon adoption of this ordinance, and shall terminate on December 31, 2036. The following fees are payable to the City at the time of issuance of building permits.

| <u>LAND USE TYPE</u> | <u>FEE</u> |
|---------------------------|-------------------------------|
| Single-Family Residential | \$2,595/DU* |
| Multi-Family Residential | \$1,648/DU |
| Senior Housing | \$701/DU |
| Hotel | \$1,964/Room |
| Retail | \$1.82/SF** |
| Office | \$3.51/SF |
| Industrial | \$2.45/SF |
| Storage Facility | \$0.53/SF |
| Church | \$1.58/SF |
| Hospital | \$4.21/SF |
| Other | \$3,507 per AM peak hour trip |

*DU = Dwelling Unit

**SF = Square Foot

- B. No development shall be exempt from the fee; provided, that any development which, as of the effective date of this Ordinance, (i) has perfected an exemption pursuant to the vested tentative map law or (ii) has entered into a development agreement with the City of Richmond which expressly excludes assessment of additional fees, shall not be subject to the fees required to be imposed hereby.
- C. A project that replaces an existing structure or development is subject to the fee only to the extent that it would generate more peak hour vehicle trips than the existing development.
- D. A developer may request a reduction in fees through the governing jurisdiction if it is determined that the project will generate a lower number of trips than the data provided by the Institute of Transportation Engineers (ITE) that was used as the basis for the “2005 Update of the Subregional Transportation Mitigation Program (STMP)”. Any such fee reduction would be based on a traffic study which determines that the traffic impacts of the proposed development would generate fees that are less than the fees that are set forth in Section IV.A. above. The methodology for conducting the study shall be developed and approved by WCCTAC. The City of Richmond shall determine the appropriate fee reduction based on the proportionate reduction in trips demonstrated in the traffic study.

Fees for uses not identified in Section IV.A. shall be determined by the City according to information generated by traffic studies or other means of determining traffic impacts as approved by WCCTAC or in accordance with the ITE Manual.

- E. A developer may receive credit against fees for the dedication of land for right-of-way and/or construction of improvements for specific 2006 STMP projects, where such right-of-way or construction is beyond that which would otherwise be required for approval of the proposed development. The calculation of the amount of credit against fees for 2006 STMP dedications or improvements shall be based upon a determination by the City that such credits are, in fact, exclusive of the dedications, setbacks, improvements, and/or traffic mitigation measures which are required by local ordinance, standards, or other practice. In addition, the credit shall be calculated based upon the actual cost of construction of improvements or, in the case of land dedication, on an independent appraisal approved by the local jurisdiction.
- F. The fees specified herein shall be made a condition of approval of all tentative and final subdivision maps. The fees shall be collected at the time of the issuance of any building permit.
- G. The STMP fees specified above shall be collected for projects in the entire City.
- H. Fees paid pursuant to this Ordinance shall be deposited in a separate segregated interest-bearing account, and together with any interest accumulated on amounts on deposit, shall be remitted on a quarterly basis to the City of San Pablo Finance Department, to be placed in a fund to be used solely for the purposes described in this Ordinance and in the Cooperative Agreement. Any interest accumulated on such funds shall also be used only for the purposes specified in this Ordinance. Funds for each project and any interest accrued thereon (collectively “STMP funds”) will be transferred to the project oversight agency by the City of San Pablo Finance Department upon satisfactory remittance of detailed invoices and approval by the WCCTAC Board.
- I. The fees will be used for, but are not limited to, the administration of the STMP, planning, environmental documentation, design, acquisition of right-of-way, and construction of the projects.
- J. Effective July 1, 2007 and on each subsequent anniversary date of such date, the amount of each of the developer fees, set forth in Section IV.A. above, shall increase or decrease by the percentage change in the Engineering News-Record Construction Cost Index for the San Francisco Bay Area for the period ending June 30 of the preceding fiscal year over the year-earlier amount. The percentage change will be calculated by the City of San Pablo Finance Department which will notify all project sponsors and signatories to the Cooperative Agreement of the change.

- K. Pursuant to Government Code section 66001(d), after the fifth fiscal year following the first deposit of 2006 STMP revenues and every five (5) years thereafter, WCCTAC shall make all required findings with respect to that portion of the fee account or fund remaining unexpended, whether committed or uncommitted, held by the City of San Pablo on its behalf. Such findings shall be made in connection with the release of public information required by Government Code section 66006(b).
- L. Pursuant to Government Code Section 66006, as specified, the City Manager shall submit a public report to the Council on an annual basis, identifying the amount of fee revenues collected and other statutorily required information.

SECTION V – PROJECT DESCRIPTIONS, FUNDING COMMITMENTS, AND ELIGIBLE COSTS, AND IMPLEMENTATION SCHEDULE

- A. List of Projects. The STMP fees provided for in this ordinance shall be used exclusively for the following projects:
 1. **Richmond Intermodal Station** – Public improvements including, but not limited to: the parking garage, station building, transit center, east side improvements, lighting and real-time transit information.
 2. **Interchanges on I-80 at San Pablo Dam Road and Central Avenue; and on Highway 4 at Willow Avenue** – Upgrade and improve the interchange at I-80/San Pablo Dam Road including provisions for bicyclists and pedestrians; enhance operations and vehicular, bicycle, pedestrian safety in the vicinity of the interchange. Modify and realign the interchange and ramp at I-80/Central Avenue, and/or other improvements to improve access to/from I-80 and I-580 at Central Avenue. Relocate and realign ramps at Willow Avenue to meet current standards for improved local access and freeway movements.
 3. **Capitol Corridor Improvements** – Parking, station platform, signage and plazas, rail improvements, etc. at the Hercules Passenger Rail Station and/or track improvements, drainage, fencing, safety improvements and/or other improvements along the Capitol Corridor line in West Contra Costa County.
 4. **Ferry Service to San Francisco from Richmond and/or Hercules/Rodeo** – New ferry service utilizing high-speed vessels and funds for capital improvements such as terminals, landside improvements, parking, lighting, transit feeder service, signage, etc.
 5. **BART Access and/or Parking Improvements** – Parking, aesthetic, and/or access improvements, station capacity improvements, sidewalks, lighting/restroom renovations, bicycle storage, expanded automatic fare collection equipment, etc. at the El Cerrito Plaza, El Cerrito Del Norte, and/or Richmond BART stations.
 6. **Bay Trail Gap Closure** – Close gaps in the Bay Trail in West Contra Costa County, including, but not limited to the following: (1) the one-mile gap along the Richmond Parkway between Pennsylvania and Gertrude Avenues; (2) the 1.8 mile gap north of Freethy Boulevard to Payne Drive in Richmond; (3) the two-mile gap from Payne Drive to Cypress Avenue in Richmond; (4) the one-mile gap from Pinole Shores to Railroad Avenue in Pinole; and (5) the 1.8 mile gap from Railroad Avenue to Parker Avenue in Hercules.
 7. **San Pablo Dam Road Improvements in Downtown El Sobrante** – Traffic calming, additional signals, pedestrian improvements, turn lanes, etc. that are identified in the Downtown El Sobrante Transportation and Land Use Plan (and subsequent documents).
 8. **San Pablo Avenue Corridor Improvements** – Infrastructure improvements on San Pablo Avenue through West Contra Costa County within a half-mile walking

distance of San Pablo Avenue in either direction and/or San Pablo Avenue SMART Corridor improvements.

9. **North Richmond Road Connection Project** – Extend Seventh Street northward to connect to an eastward extension of Pittsburg Avenue in North Richmond.
10. **Hercules Transit Center** – Relocate and expand the Hercules Transit Center on the east side of Highway 4.
11. **Del Norte Area Transit Oriented Development Project Public Improvements** – Parking facilities; bicycle, pedestrian, and/or bus transit access improvements; signage; lighting; improvements to station access or station waiting areas; ADA improvements; improvements to adjacent streets, street crossings, or signals; and/or Ohlone Greenway improvements.

- B. Funding commitments and Eligible Costs. Program revenues shall be available for project costs through completion of construction. Costs include, but are not limited to, environmental clearance, conceptual engineering, traffic studies, design, right of way acquisition, utility relocation, and costs of construction. Funding amounts are estimates and are in 2005 dollars. Actual funding commitments will depend upon the 2006 STMP fee revenues collected.

Administrative costs shall not exceed two percent (2%) of the STMP fee revenues disbursed under the Cooperative Agreement during each quarterly period for each of the Project Sponsors and WCCTAC, and one percent (1%) of the STMP fee revenues disbursed under the Cooperative Agreement during each quarterly period to the City of San Pablo Finance Department.

- C. Implementation Schedule. Subject to environmental clearance, right of way acquisition and dedication, utility relocation, and other factors (the timing of which may be beyond the control of WCCTAC), and subject to the availability of regional fee and other funding sources as may be required, the implementation guidelines and details of the project priorities will be contained in the Strategic Plan to be adopted by the WCCTAC Board no later than one hundred twenty (120) days after adoption of the Cooperative Agreement and this Ordinance.

WCCTAC, the project sponsors, co-sponsors, and the City of San Pablo Finance Department shall work to promote steady progress on all of the projects, to the extent that funding and project readiness permit.

SECTION VI – NOTICE AND HEARINGS

This Ordinance was adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION VII – EFFECTIVE DATE

In accordance with Section 66017(b) of the Government Code of the State of California, this Ordinance shall take effect immediately. Based on the findings set forth in Section III that demonstrate the current and immediate threat to the public health, welfare and safety, the 2006 STMP fee is hereby adopted on an interim basis to be effective for 30 days following the adoption of this ordinance. This ordinance is adopted to protect the public health, safety and welfare.

SECTION VII – SEVERABILITY

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City/County hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

I certify that the foregoing was passed and adopted by the Council of the City of Richmond at a regular meeting held on July, 11, 2006, by the following vote:

AYES: Councilmember Butt, Griffin, McLaughlin, Rogers, Viramontes,
and Mayor Anderson

NOES: None

ABSTENTIONS: None

ABSENT: Councilmember Bates, Marquez, and Thurmond

DIANE HOMES
Clerk of the City of Richmond

(SEAL)

Approved:

IRMA L. ANDERSON
Mayor

Approved as to form:

JOHN EASTMAN
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 29-06 N.S., finally passed and adopted by the Council of the City of Richmond at regular meeting held on July 11, 2006.