

ORDINANCE NO. 2012-033

Adopted by the Sacramento City Council

August 9, 2012

AN ORDINANCE ADDING CHAPTER 18.38 TO THE SACRAMENTO CITY CODE, RELATING TO THE DELTA SHORES PLANNING AREA REGIONAL INFRASTRUCTURE FEE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Chapter 18.38 is added to the Sacramento City Code to read as follows:

CHAPTER 18.38 DELTA SHORES PLANNING AREA REGIONAL INFRASTRUCTURE FEE

18.38.010 Definitions.

The following definitions apply in this chapter:

“Cost Sharing Agreement” means City Agreement No. 2012-0059 (dated January 10, 2012) between the City and M&H, as amended or supplemented from time to time.

“Delta Shores Area” means the proposed master-planned community that is identified in the Finance Plan as Delta Shores and consists of residential, commercial, and retail uses on approximately 780 acres within the City limits and adjacent to the City’s southern boundary.

“Delta Shores Regional Infrastructure Fund” means the fund created by subsection A of section 18.38.090.

“Development” means the uses to which land will be put, the buildings and improvements to be constructed on it, and the construction of those buildings and improvements, together with the process of obtaining all required land-use entitlements.

“Development Project” means any project undertaken for the purpose of Development within the Stone Boswell Area but does not include projects undertaken by or for public agencies, including but not limited to schools and parks.

“Enhancement Cost” means the costs of enhancements to the Regional Infrastructure that will benefit the Delta Shores Area and the Stone Boswell Area but not the City. The Finance Plan allocates the Enhancement Cost as follows: 84% to the Delta Shores Area and 16% to the Stone Boswell Area.

“Entitlement” means any of the following when associated with a Development Project: a master parcel map (section 16.32.160 of this code), a subdivision map or parcel map (sections 16.12.020 and 16.12.030), or a building permit (chapter 15.08).

“Government Code” means the California Government Code, as amended or renumbered from time to time.

“Finance Plan Area” means the Delta Shores Area and the Stone Boswell Area, as those areas may exist from time to time.

“Finance Plan” means the Delta Shores Public Facilities Financing Plan adopted by the City Council by Resolution No. 2009-037 dated January 13, 2009, as amended or supplemented from time to time.

“Manager” means the City Manager or his or her designee.

“M&H” means M&H Realty Partners VI, L.P., a California limited partnership.

“Regional Infrastructure Fee” means a monetary exaction that fits the definition of “fee” in Government Code section 66000 and is established in accordance with this chapter to finance the design, construction, installation, and acquisition of the Regional Infrastructure.

“Regional Infrastructure” means the freeway interchange at the future intersection of Cosumnes River Boulevard and Interstate Highway 5, the extension of Cosumnes River Boulevard from Interstate Highway 5 east to Franklin Boulevard, and the extension of Cosumnes River Boulevard from Interstate Highway 5 west to Freeport Boulevard.

“Stone Boswell Area” means the approximately 125 acres adjacent to the eastern boundary of the Delta Shores Area and identified in the Finance Plan as the Stone Boswell site. As of January 10, 2012, the Stone Boswell Area comprised a 15-acre parcel (APN 053-0010-049), a 37-acre parcel (APN 053-0010-047), and a 73-acre parcel (APN 053-0010-048), with the 15-acre parcel and the 73-acre parcel zoned R-1A (Single-Family Alternative Zone) and the 37-acre parcel zoned R-1 (Standard Single-Family Zone).

“Stone Boswell Share” means 7.9% of the following: the total cost of the Regional Infrastructure less the Enhancement Cost.

18.24.020 Purpose.

The Cost Sharing Agreement obligates M&H to advance the following portion of the funds the City needs to design, construct, install, and acquire the Regional Infrastructure: the Stone Boswell Share and the 16% of the Enhancement Cost allocated to the Stone Boswell Area. The agreement also obligates the City to establish a development-impact fee in accordance with the Finance Plan and the California Mitigation Fee Act (Government Code sections 66000 through 66025), to impose the

development-impact fee on Development Projects, and to use the fee revenues to reimburse M&H for the funds advanced. This chapter implements the City's obligation under the Cost Sharing Agreement to establish, impose, and collect fees. By enacting this chapter, the City intends to protect and promote the public health, safety, and welfare by designing, constructing, installing, and acquiring the Regional Infrastructure and by allowing Development within the Stone Boswell Area on the condition that applicants for the first Entitlements on the Development Projects pay their share of the design, construction, installation, and acquisition costs.

18.38.030 Establishment of the Regional Infrastructure Fee.

- A. A Regional Infrastructure Fee is hereby established to provide funding for the design, construction, installation, and acquisition of the Regional Infrastructure and for the administration of this chapter.
- B. The City Council shall, by resolution, establish the initial amount of the Regional Infrastructure Fee in accordance with section 18.38.040. When establishing the initial amount, the City Council may, by resolution, adopt additional provisions, procedures, and policies to implement the Regional Infrastructure Fee.
- C. The amount of Regional Infrastructure Fee and the provisions, procedures, and policies adopted by resolution under this section must be consistent with the Cost Sharing Agreement and the Finance Plan.

18.38.040 Proceedings to set the initial amount of the fee.

- A. Public hearing. At the time of setting the initial amount of the Regional Infrastructure Fee, the City Council shall hold a public hearing on the proposed amount in the manner required by Government Code sections 66016, 66017, and 66018.
- B. Findings. The City Council shall make the following findings when it adopts the initial amount of the Regional Infrastructure Fee:
 - 1. A finding that the amount has been determined and calculated in the manner consistent with the Cost Sharing Agreement and the Finance Plan.
 - 2. Findings addressing the matters set forth in subdivisions (a) and (b) of Government Code section 66001.
- C. Effective date. The effective date of any resolution that establishes the initial amount of the Regional Infrastructure Fee is to be determined in accordance with Government Code section 66017.

18.38.050 Automatic annual adjustment.

A. Definitions. The following definitions apply only in this section:

“Advance Payment” means any portion of the Stone Boswell Share or the 16% of the Enhancement Cost allocated to the Stone Boswell Area that M&H has paid in advance, as calculated under section 6 of the Cost Sharing Agreement.

“Caltrans Index” means the Quarterly California Highway Construction Cost Index (Price Index for Selected Highway Construction Items) published by the California Department of Transportation, Division of Engineering Services – Office Engineer.

“ENR Index” means the Engineering News Record Construction Cost Index for San Francisco.

B. Annual Adjustment. The City shall, by resolution, annually adjust the initial amount of the Regional Infrastructure Fee by the greater of the following (but in no event by less than zero percent), with all calculations carried out to three decimal places:

1. the most recent ENR Index, calculated with the year-over-year change as of each anniversary of the Advance Payment; or
2. the Caltrans Index 3-year moving average, calculated using the 12-quarter average through the last available quarter preceding the date of the Advance Payment over the 12-quarter average through the same quarter of the prior year.

C. The effective date of any resolution that adjusts the initial amount of the Regional Infrastructure Fee is to be determined in accordance with Government Code section 66017.

18.38.060 Imposition of Regional Infrastructure Fee.

The City shall impose the Regional Infrastructure Fee on each Development Project, except as follows: a Development Project that is on property subject to a development agreement authorized by chapter 18.16 of this code and Government Code sections 65864 through 65869.5 will be exempt from the Regional Infrastructure Fee if the development agreement includes a requirement that the owner of the property pay to the City a fee calculated in accordance with section 6(a) of the Cost Sharing Agreement.

18.38.070 Computation of fee amount for each Development Project.

The Manager shall determine and calculate the Regional Infrastructure Fee due for each Development Project, using the fee amount in effect when the first Entitlement for the project is recorded (if a map) or issued (if a building permit), as follows:

- A. Multiply the sum of the Stone Boswell Share and 16% of the Enhancement Cost by a fraction with a numerator equal to the gross acreage of the Stone Boswell Area subject to an Entitlement and a denominator equal to the total acreage of the Stone Boswell Area. Neither the numerator nor the denominator is to include any acreage then reserved or entitled for open-space or governmental uses.
- B. Adjust the resulting product in accordance with section 18.38.050.
- C. Multiply the adjusted product from subsection B by 0.03 to determine the administrative component of the fee. The City shall use the administrative component to pay its costs of administering this chapter.
- D. Add the administrative component from subsection C to the resulting product from subsection B. This is the amount of the fee due unless subsection E of this section applies.
- E. When the Regional Infrastructure Fee is imposed on a Development Project that qualifies as a "housing development" under Government Code section 66005.1, and if that Development Project has the characteristics set forth in subdivision (a) of section 66005.1, then the Manager shall adjust the fee amount in accordance with section 66005.1 unless the City Council adopts findings, after a public hearing, establishing that the Development Project, even with those characteristics, would not generate fewer automobile trips than a housing development without those characteristics. If the fee due for a Development Project is adjusted in accordance with this subsection E, then the Manager shall proportionally adjust the fee amounts imposed on other Development Projects.

18.38.080 Time of payment of fee.

- A. Except as otherwise provided in subsection B of this section, or by any policies, guidelines, or procedures the City Council establishes under Section 18.38.030.B (pertaining to provisions, procedures, and policies to implement the Regional Infrastructure Fee), the applicant for the first Entitlement on a Development Project must pay the Regional Infrastructure Fee as a condition of approval for the Entitlement. The City shall collect the fee, and the fee will be due and payable, as follows:
 1. Master parcel maps. The fee will be due and payable when the final map for each master parcel is filed with the City for recordation. Fees paid

under this subsection A.1 are not refundable except as provided in Section 18.38.100.

2. Subdivision and parcel maps. The fee will be due and payable when a final map or parcel map is filed with the City for recordation. Fees paid under this subsection A.2 are not refundable except as provided in Section 18.38.100.

3. Building permits.

a. If, while the zoning of a parcel is the same as it was on January 10, 2012, a special permit is sought for a Development Project authorized under the zoning designation for that parcel, then the City shall not issue building permits for construction in accordance with the special permit until the Regional Infrastructure Fee for the parcel is paid.

b. If, after January 10, 2012, the zoning designation of a parcel is changed to allow large-scale office, commercial, hospital, manufacturing, or industrial uses, then the City shall not issue building permits for a Development Project on the rezoned parcel until the Regional Infrastructure Fee for the parcel is paid.

c. If a building permit expires before construction begins, then the person or entity that paid the Regional Infrastructure Fee under this subsection A.3 will be entitled to a refund of the fee paid, subject to the following: (i) the fee payer must submit a written refund application to the Manager within 90 days after the building permit expires; (ii) the amount refunded will not include interest and will not include the administrative component of the fee, which reimburses the City's costs to administer this chapter; and (iii) failure to timely submit a refund application will constitute an absolute and unconditional waiver of any right to a refund except as provided in Section 18.38.100.

d. If the Regional Infrastructure Fee is refunded under subsection A.3.c, then the applicant for the next building permit for the Development Project must pay the Regional Infrastructure Fee as a condition of approval for that permit.

B. Notwithstanding subsection A of this section, and in accordance with Government Code section 66007, when the Regional Infrastructure Fee is imposed on a residential Development Project, the fee will be due and payable before the final inspection or the issuance of a certificate of occupancy, whichever occurs first, unless one of the following applies:

1. The Manager determines that Delta Shores Regional Infrastructure Fund has been established, that funds for the Regional Infrastructure have been appropriated, and that the City has adopted a proposed construction schedule or plan.
 2. The fee is to reimburse the City for expenditures previously made.
- C. The Regional Infrastructure Fee owed for a Development Project may not be prepaid.
- D. When the Regional Infrastructure Fee for a Development Project is due and payable under this section, the Manager shall provide to the applicant a written notice that—
1. states the amount of the Regional Infrastructure Fee due and payable; and
 2. explains that the applicant may protest the fee in accordance with section 18.38.130 and Government Code section 66020 by filing a written protest within 90 days after the date of the notice and by tendering payment of the amount due.
- E. If, after payment of the Regional Infrastructure Fee due for an Entitlement, the zoning of the affected land is changed to allow a more-intensive use, then the applicant for the first Entitlement based on the more-intensive use shall pay, as a condition of approval for that Entitlement, a supplemental Regional Infrastructure Fee equal to the difference between the Regional Infrastructure Fee previously paid and the Regional Infrastructure Fee that applies when the Entitlement based on the more-intensive use is approved.
- F. The City's failure to collect the Regional Infrastructure Fee when due does not waive the obligation to pay the fee. If the City records a final map for master parcel map, records a final map or parcel map, or issues a building permit without receiving full payment of the associated Regional Infrastructure Fee, then the applicant for that Entitlement shall pay the fee owed within 30 days after the applicant receives the City's written demand for payment.

18.38.090 Establishment of Regional Infrastructure Fund; use of fee revenues.

- A. The Delta Shores Regional Infrastructure Fund is hereby established specifically to hold the revenues generated by the Regional Infrastructure Fee, and the City shall deposit all such revenues into that fund, which the City shall manage in accordance with Government Code section 66006. The City shall also deposit in the fund any interest income earned on the fund balance.

- B. The City shall use the fee revenues and interest income deposited in the Delta Shores Regional Infrastructure Fund to reimburse M&H in accordance with the Cost Sharing Agreement and to reimburse the City for the costs of administering this chapter. The City shall not use the fee revenues and interest income to make inter-fund transfers or loans.

18.38.100 Disposition of unexpended or unappropriated fee revenues.

- A. Beginning with the fifth fiscal year following the first deposit into the Delta Shores Regional Infrastructure Fund, and in each fiscal year thereafter, the City Council shall make the following findings with respect to the moneys in the Delta Shores Regional Infrastructure Fund that remain unexpended, whether committed or uncommitted as of the date of the report:
1. A finding identifying the purpose to which the fee revenues and any interest earned on them are to be put.
 2. A finding demonstrating a reasonable relationship between the Regional Infrastructure Fee and the purpose for which it is charged.
 3. A finding identifying all sources and amounts of funding anticipated to complete financing of incomplete components of the Regional Infrastructure.
 4. A finding designating the approximate dates on which the funding referred to in subsection A.3 of this section is expected to be deposited into the Delta Shores Regional Infrastructure Fund.
- B. The City Council shall make the findings required by subsection A of this section in connection with the information required by subsection A of section 18.38.120. If the findings are not made as required by subsection A of this section, then the City shall refund the moneys in the Delta Shores Regional Infrastructure Fund in accordance with subsection C of this section.
- C. Except as provided in subsection D of this section, when the City has collected sufficient funds to complete financing of an incomplete component of the Regional Infrastructure, as determined under subsection A.6 of section 18.38.120, the City shall take one of the following actions within 180 days of the determination that sufficient funds have been collected:
1. Identify an approximate date by which the construction of the component will be commenced.
 2. Refund on a prorated basis to the then-current record owner or owners of the lots or units of the Development Project or Development Projects, as identified on the last equalized assessment roll, the unexpended portion of

the Regional Infrastructure Fee and any interest accrued on it, subject to following:

- a. The City may refund the unexpended revenues by direct payment, by providing a temporary suspension of fees, or by any other reasonable means consistent with the purpose of this section.
 - b. If the administrative cost of refunding the unexpended or unappropriated fee revenue exceeds the amount to be refunded, then the City Council, after considering the matter at a public hearing, notice of which is given in the manner provided for by subdivision (f) of Government Code section 66001, may appropriate the revenue for any other public improvement, facility, or property in the Finance Plan Area for which development-impact fees are imposed under title 18 of this code and which the City Council determines will benefit the Stone Boswell Area.
 - c. The portion of any fee revenue the City received as reimbursement of its costs to administer this chapter will not be refunded but will be applied to reduce the portion of the Regional Infrastructure Fee charged for administrative purposes.
- D. This section is to be applied consistently with subdivisions (d), (e), and (f) of Government Code section 66001.

18.38.110 Other fee and dedication requirements.

This chapter does not release any owner of residential or nonresidential property within the Finance Plan Area from complying with the following:

- A. The obligation to pay other applicable fees relating to Development of property, including but not limited to application fees, processing fees, mitigation fees, and other development-impact fees within the City's control.
- B. Any public-facility or public-improvement requirements imposed by applicable law, including but not limited to this code.
- C. Any requirement under applicable law, including but not limited to this code, the City Charter, and the Government Code, to dedicate property for public use at the time of approval of a tentative subdivision map, tentative master-parcel map, certificate of compliance, building permit, or other land-use entitlement.
- D. Any obligation to comply with mitigation requirements for identified project-related environmental effects.

18.38.120 Annual reports and review of fee.

- A. Within 180 days after the end of each fiscal year, the Manager shall prepare for the City Council a report identifying the following information for that fiscal year:
1. A brief description of the Regional Infrastructure Fee.
 2. The amount of the Regional Infrastructure Fee.
 3. The beginning and ending balances of the Delta Shores Regional Infrastructure Fund.
 4. The amount of revenues that were collected from the Regional Infrastructure Fee and the interest earned on the revenues.
 5. Identification of the each component of the Regional Infrastructure on which revenues from the Regional Infrastructure Fee were expended and the amount of the expenditures for each component, including the total percentage of the cost of the component that was funded with the fee revenues.
 6. For each component of the Regional Infrastructure that remains incomplete and for which the City determines that sufficient funds have been collected to complete financing of the component, identification of an approximate date by which construction of the component will commence if the City determines that sufficient funds have been collected to complete financing of the component.
 7. The amount of refunds made in accordance with section 18.38.100 and of any allocations made in accordance with subsection C.2.b of section 18.38.100.
 8. The amount of any automatic annual adjustment made under section 18.38.050, including the basis of the calculation.
- B. In addition to the report described in subsection A of this section, the Manager shall present to the City Council, at least once each fiscal year, a proposed capital-improvement program for the Regional Infrastructure, assigning moneys (including any accrued interest) from the Delta Shores Regional Infrastructure Fund to specific components and related expenses. The adoption of a capital-improvement program must comply with the provisions of Government Code section 66002.
- C. The Manager and the City Clerk shall make the report available to the public as required by subdivision (b) of Government Code section 66006, and the City

Council shall review the report at its first regularly scheduled public meeting held at least 15 days after the report is made available to the public. The City Clerk shall comply with subdivision (b) of Government Code section 66006 when scheduling the hearing and giving notice of it.

- D. The City Council may, by resolution, revise the Regional Infrastructure Fee to reflect the findings made from City Council's consideration of the annual report and to include additional projects previously not foreseen as being needed, provided that all revisions are consistent with the Finance Plan.

18.38.130 Protest of fee.

- A. The applicant for the first Entitlement on a Development Project may file a protest of the Regional Infrastructure Fee imposed on the project by filing a written protest notice with the Manager and the City Council in the manner provided in, and within the times specified in, Government Code sections 66020 and 66021.
- B. Concurrently with filing the written protest notice, the applicant must tender to the Manager the full amount of the fee under protest, together with payment of a non-refundable protest-filing fee in the amount established by the City Council to offset the City's reasonable costs of processing the protest and any appeal. The applicant will be liable for the City's actual cost to process the protest, including the cost of any appeal to the City Council, to the extent that the actual cost exceeds the filing fee. The City may deduct the excess amount from any refund found due and owing to the applicant or may add it to the amount of the Regional Infrastructure Fee found to be due or owing from the applicant, as the case may be.
- C. The Manager shall consider the protest at an informal hearing held within 60 days after the filing of the protest notice. The Manager shall issue a decision on the protest and send a copy of the decision to the applicant by first-class mail, postage prepaid, within 15 days after the later of the following: the date of the informal hearing or the date the Manager sets during the informal hearing for the applicant's submission of any additional evidence the Manager determines to be necessary to the decision. The applicant's failure to timely submit additional information requested by the Manager may result in denial of the protest. The decision of the Manager will be final and will not be appealable, except as provided in subsections F and G of this section.
- D. The Manager shall consider the following when determining whether to approve or deny a protest:
 - 1. The matters set forth in subdivisions (a) and (b) of Government Code section 66001.
 - 2. The substance and nature of the evidence presented by the applicant.

3. The facts, findings, and conclusions stated in the Finance Plan and the Cost Sharing Agreement, including technical information, studies, audited construction costs, and reports contained within and supporting the plan and agreement, together with findings supporting the resolution setting the amount of the fee or fees in question. The applicant must present comparable technical information, studies, and reports to demonstrate that the fee is inappropriate for the Development Project involved.
- E. If the Manager grants the protest and reduces the fee amount owed, and if the zoning within the Development Project involved is subsequently changed to allow a more-intensive use, then the applicant for the first Entitlement based on the more-intensive use shall pay, as a condition of approval for that Entitlement, a supplemental Regional Infrastructure Fee equal to the difference between the Regional Infrastructure Fee previously paid and the Regional Infrastructure Fee that applies when the Entitlement based on the more-intensive use is approved.
- F. The applicant may appeal the Manager's decision to the City Council in accordance with chapter 1.24 of this code by filing a notice of appeal with the City Clerk within 10 days after the date of the Manager mails the decision. In deciding the appeal, the City Council or the appointed hearing examiner, as the case may be, shall consider the factors set forth in subsection D of this section. The City Clerk shall mail the City Council's or hearing examiner's decision to the applicant by first-class mail, postage prepaid, within five days after the hearing on the appeal concludes. The decision will be final and not appealable, except as provided in subsection G of this section.
- G. The protest procedures set forth in this section are administrative procedures that must be exhausted before the filing of any petition seeking judicial review. Such a petition must be filed under Code of Civil Procedure section 1094.5 on or before the later of the following: the 90th day after the date on which the decision is mailed to the applicant, or the expiration of the 180-day limitation period set forth in subdivision (d)(2) of Government Code section 66020.

18.38.140 Mitigation Fee Act.

This chapter and all resolutions adopted under it are subordinate to the Mitigation Fee Act (Government Code sections 66000 through 66025) as that act exists on the date this chapter is enacted and as it may subsequently be amended or renumbered from time to time. The Mitigation Fee Act will control if a conflict arises between it and this chapter.

18.38.150 Severability.

- A. If, for any reason, any part of this chapter is invalid, then all valid parts that are severable from the invalid part remain in effect.

- B. If, for any reason, any fee amount established by this chapter is invalid, then all remaining fee amounts so established remain in effect.
- C. If the Regional Infrastructure Fee is invalid because of an insufficient nexus to a specific component of the Regional Infrastructure, then the fee remains valid as it relates to other components of the Regional Infrastructure.

Adopted by the City of Sacramento City Council on August 9, 2012 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, McCarty, Pannell, Schenirer, Sheedy.

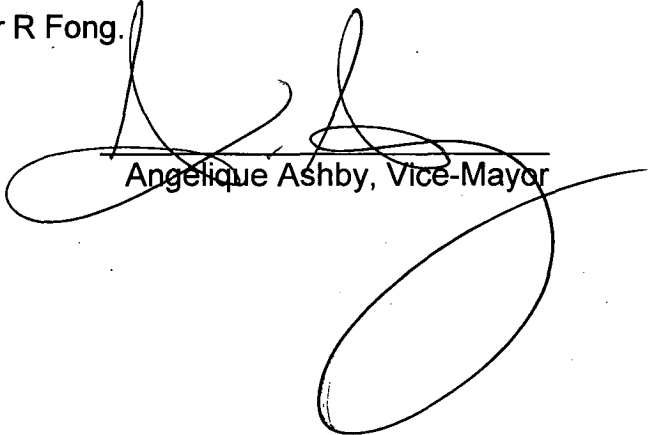
Noes: None.

Abstain: None.

Absent: Mayor Johnson and Councilmember R Fong.

Attest:


Shirley Concolino, City Clerk


Angelique Ashby, Vice-Mayor

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