

ORDINANCE NO. 2014-161

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENIFEE, CALIFORNIA, AMENDING THE MENIFEE MUNICIPAL CODE BY ADDING CHAPTER 9.56 TO REQUIRE THE DEDICATION OF LAND OR THE PAYMENT OF FEES IN LIEU THEREOF, OR A COMBINATION OF BOTH, FOR PARK AND RECREATIONAL PURPOSES AS A CONDITION OF APPROVAL FOR RESIDENTIAL DEVELOPMENT PROJECTS NOT REQUIRING A TENTATIVE MAP OR PARCEL MAP, PURSUANT TO THE MITIGATION FEE ACT

WHEREAS, Government Code Sections 66000 et seq. (also known as the “Mitigation Fee Act”) authorizes the legislative body of a city to, by ordinance, impose Mitigation Fees on development projects for the purpose of defraying all or a portion of the cost of public facilities related to the development project; and

WHEREAS, the Mitigation Fee Act permits Mitigation Fees to be adopted and imposed for the purpose of defraying all or a portion of the cost of public facilities related to a development project, and Mitigation Fees for park and recreation facilities are authorized under the Mitigation Fee Act; and

WHEREAS, Chapter 9.55 of the Meniffee Municipal Code, adopted pursuant to California Government Code Section 64477 (the “Quimby Act”), requires the dedication of parkland for residential development subject to the Quimby Act, or the payment of a fee in-lieu of dedicating property (the “Quimby Ordinance”); and

WHEREAS, pursuant to the Quimby Act, the Quimby Ordinance authorizes the imposition of parkland dedication or in-lieu fee as a condition of approval on any tentative map or parcel map; and

WHEREAS, certain future residential developments in the City may not require approval of a tentative map or parcel map, and thus are not subject to the Quimby Ordinance, despite the fact that residents who will occupy these future residential units will increase the demand for park and recreational facilities; and

WHEREAS, the City Council of the City of Meniffee (“City Council” or “City,” as applicable) has determined that it is necessary to amend the Meniffee Municipal Code for the purpose of requiring developers of new residential projects that are not subject to the Quimby Ordinance to pay Park and Recreation Mitigation Fees, as authorized by the Mitigation Fee Act; and

WHEREAS, the proposed Code Amendment (DCA 2014-219) (adding Chapter 9.56 to the Meniffee Municipal Code) will require developers to pay Mitigation Fees for the purpose of defraying all or a portion of the cost of public park and recreation facilities related to a development project (“Parks and Recreation Mitigation Fees”) as a condition of the approval of a residential development project that is not subject to the Quimby Ordinance; and

WHEREAS, the Open Space and Conservation Element of the City's General Plan identifies the City's park and recreation facilities, including the present level of service, use and need of those facilities, which will increase with future population growth from new development; and

WHEREAS, the Open Space and Conservation Element of the City's General Plan establishes standards and requirements for the development of parks at a minimum of five (5) acres per 1,000 population to provide for the needs of future population growth resulting from new residential developments; and

WHEREAS, the Parks and Recreation Mitigation Fees are for purposes of developing new or rehabilitating existing park or recreational facilities, and shall be calculated using the same standard used to calculate fees under the Quimby Ordinance—that is, five (5) acres per 1,000 population multiplied by the currently accepted appraisal value of vacant residential land in the City multiplied by the Federal Census population numbers for single-family and multi-family dwellings, respectively—and shall apply only to those residential developments not subject to the Quimby Ordinance; and

WHEREAS, the Mitigation Fee Act provides that prior to the adoption of an impact fee ordinance, the local governmental agency must: (a) identify the purpose of the fee; (b) identify the use to which the fee will be put; (c) make specific findings to determine that there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; (d) make specific findings to determine that there is a reasonable relationship between the need for the public facility and the type of the development project on which the fee is imposed; (e) make specific findings to determine that there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development project on which the fee is imposed, including that the fee shall not exceed the estimated reasonable cost of providing the service or facility; and (f) hold at least one noticed, public hearing as part of a regularly scheduled meeting; and

WHEREAS, in accordance with the above-referenced requirements of the Mitigation Fee Act, the City Council finds the following with respect to the Parks and Recreation Mitigation Fees:

1. Purpose of the Fee. The purpose of the fee is to provide funding to achieve the City's goal of maintaining park service levels and to provide adequate recreational services for Menifee residents and employees, as established in the City's General Plan. The proposed Impact Fee is solely for the purpose of developing new or rehabilitating existing park or recreational facilities associated with residential development not subject to the Quimby Act. In other words, the proposed Impact Fee will not apply to projects to which Quimby Fees can already be assessed through a condition of approval on a tentative tract map or parcel map.

Assessing a Parks and Recreation Mitigation Fee on those developments not subject to the Quimby Act is consistent with the City's General Plan. The Open Space and Park Element of the General Plan establishes standards and requirements for the development of a minimum of five (5)

acres per 1,000 population of new parks to provide for the needs of future population growth. All new residential developments — not just those subject to the Quimby Act — will contribute to the City's increased growth. Accordingly, in order to comply with the five (5) acre per 1,000 residents requirement, the City will need to provide more facilities for parks and recreation than is currently in place. Without assessing the Parks and Recreation Mitigation Fee on those developments not subject to the Quimby Act, there will be insufficient revenue from the new residential developments to remain consistent with the General Plan.

2. Use of the Fee. The proceeds from the fees will be used for the purpose of acquiring and developing new or rehabilitating existing park or recreational facilities. The proposed Parks and Recreation Mitigation Fee will collect a proportionate fee from residential development projects that are not subject to the Quimby Act. The Parks and Recreation Mitigation Fee for residential development projects that are not subject to the Quimby Act is proposed to be based on the same dedication/in lieu fee standard for residential units that are covered by the Quimby Act.

New residential developments will result in increased demands on the City's park and recreation facilities. The need to plan and provide for population increases, and the impact on the City's park and recreation facilities, is demonstrated through the Open Space and Conservation Element of the City's General Plan.

Any Parks and Recreation Mitigation Fee would not be used to overcome the current deficiency, but could be used for additional facilities and parks necessary to meet projected future need from new development. Revenues from the proposed Parks and Recreation Mitigation Fee are anticipated to be used, among other things, to offset costs associated with park and recreation facilities uses.

3. Relationship Between the Fee's Use and the Type of Development Project on Which the Fee is Imposed. The fee will be applied to residential development projects. New residential development will place additional burdens on the Citywide community and recreation facilities. Based upon the current use and service levels for the City's park and recreation facilities, these new developments will impose a need for expanded or additional facilities. However, because certain developments do not fall within the Quimby Act's scope, those projects are not currently required to pay any type of fee toward parks and recreation facilities. Residents who will occupy future residential units that are not subject to the Quimby Act will nonetheless create demand for park facilities.

Accordingly, the fees will be used to acquire and construct new parkland, facilities, and equipment to meet the demands of new residential development. The parkland acquired and the park and recreation facilities constructed with the proceeds of the fee will address and mitigate the additional impacts and demands created by these residential development

projects.

4. Relationship Between the Need for the Facility and the Type of Project. Each new residential development project will generate demands on park and recreation facilities through the resulting increase in residential population in the City, and the associated new park facilities and equipment are needed to provide those services. Current park facilities are only adequate for the existing residents. The City needs to acquire new park facilities and equipment to meet the demands of new residential development, and the parks developed with the proceeds of the fee will address and mitigate the additional impacts and demands created by residential development projects.
5. Relationship Between the Amount of the Fee and the Cost of the Facility or Portion of the Facility Attributed to the Project. The fee has been calculated by apportioning the cost of parkland acquisition and development of facilities to the number of residents generated by each type of new residential unit at the rate of 5 acres per 1,000 population, which is consistent with the Quimby Act's apportionment of cost for cities, like the City of Menifee, where the amount of existing park area exceeds 3 acres per 1,000 residents. The Parks and Recreation Mitigation Fee, like the Quimby Act fee, is based upon a recent appraisal of the value of vacant residential land in the City and the current federal census numbers. The amount of fee collected in aggregate is directly attributable to the projected number of residents in any new development project and does not exceed the amount estimated for providing those facilities.

WHEREAS, pursuant to Government Code sections 66016, 66017 and 66018, the City has: (a) mailed notice at least fourteen (14) days prior to this meeting to all interested parties that have requested notice of new or increased fees or service charges; (b) published notice pursuant to the requirements of Government Code section 6062a; and (c) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed fees.

WHEREAS, pursuant to Section 15168(c)(2) of Title 14 of the California Code of Regulations, the proposed Code Amendment (DCA 2014-219) does not require additional review under the California Environmental Quality Act, Public Resources Code Section 21000 et seq. ("CEQA") because the proposed amendments to the Municipal Code are within the scope of the project covered by the Environmental Impact Report for the City's General Plan (State Clearinghouse No. 2012071033); and

WHEREAS, because the proposed Code Amendment (DCA 2014-219) includes amendments to Title 9 of the Menifee Municipal Code (Planning and Zoning) that regulate the use of land, it has been processed pursuant to Government Code Sections 65853 through 65857; and

WHEREAS, on November 12, 2014, the Planning Commission held a duly noticed public hearing to receive public testimony on the proposed Code Amendment (DCA 2014-219) and to appraise all relevant information pertaining thereto, and after considering all

relevant public testimony as well as all materials in the staff report and accompanying documents, the Planning Commission recommended to the City Council approval of the proposed Code Amendment (DCA 2014-219) and recommended that the Council find the proposed Code Amendment (DCA 2014-219) does not require further environmental review under CEQA; and

WHEREAS, on October 23, 2014, the Parks, Recreation and Trails Commission held a duly noticed public hearing to receive public testimony on the proposed Code Amendment (Ordinance No. 2014-161) and to appraise all relevant information pertaining thereto, and after considering all relevant public testimony as well as all materials in the staff report and accompanying documents, the Parks, Recreation and Trails Commission recommended to the City Council approval of the proposed Code Amendment (Ordinance No. 2014-161); and

WHEREAS, on December 3, 2014, the City Council held a duly noticed public hearing to receive public testimony on the proposed Code Amendment (DCA 2014-219) and to appraise all relevant information pertaining thereto, and considered all public testimony as well as all materials in the staff report and accompanying documents to repeal Section 10.35 of the Riverside County Land Use Ordinance No. 460.152, as adopted by the City, and replace it with a new Chapter 9.56.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MENIFEE DOES ORDAIN AS FOLLOWS:

Section 1. Recitals.

The above recitals are true and correct and incorporated herein.

Section 2. Title.

This Ordinance shall be known as the “Parks and Recreation Mitigation Fee Act Ordinance.”

Section 3. The City Council has read and considered the proposed amendments to Title 9 of the Menifee Municipal Code (Planning and Zoning) referred to herein as “Code Amendment (DCA 2014-219),” as set forth in Exhibit “A”.

Section 4. Findings.

After considering the proposed Code Amendment (DCA 2014-219), the recommendations of the Parks, Recreation and Trails Commission and Planning Commission, staff recommendations, public testimony and correspondence, and reports thereon, the City Council hereby makes the following findings:

1. The proposed amendments to the Municipal Code are consistent with the Mitigation Fee Act (Government Code § 66000 *et seq.*) because, as set forth in the recitals to this ordinance:
 - a. There is a reasonable relationship between the proposed fee’s use (*i.e.*, the development of new and rehabilitation of existing parks and recreational facilities) and the type of development project on which

the fee is imposed (*i.e.*, residential development that is not subject to the Quimby Ordinance but will nevertheless increase demand for public parks and recreational facilities);

- b. There is a reasonable relationship between the need for the parks and recreation facilities and residential development that is not subject to the Quimby Ordinance but will nevertheless create a demand for parks and recreational facilities;
 - c. There is a reasonable relationship between the amount of the fee and the cost of providing parks and recreational facilities that will serve the residential development; and
 - d. The fee shall not exceed the estimated reasonable cost of providing the parks and recreational facilities to serve the residential development.
2. The proposed amendments to the Municipal Code are consistent with the City's General Plan and, in particular, the Open Space and Conservation Element, which contemplates the City will adopt an ordinance requiring that developers set aside land, donate conservation easements, or pay fees for park improvements.
 3. The City does not have any adopted specific plans that conflict with the proposed Code Amendment.
 4. The City Council of the City of Menifee finds that the proposed Code Amendment by way of DCA 2014-219 is consistent with the requirements of the Menifee Municipal Code regarding the process of amending the Municipal Code.
 5. Pursuant to 14 C.C.R. § 15168(c)(2), the proposed Code Amendment does not require additional review under CEQA because the proposed amendments to the Municipal Code are within the scope of the project covered by the Environmental Impact Report for the City's General Plan (State Clearinghouse No. 2012071033).

Section 4. The City Council hereby accepts the recommendation of the Planning Commission.

Section 5. Chapter 9.56 to the Menifee Municipal Code.

The City Council hereby adopts Code Amendment (DCA 2014-219). Chapter 9.56 "Park and Recreation Mitigation Fees for Residential Development Not Requiring a Tentative Map or Parcel Map" is hereby added to the Menifee Municipal Code as set forth in Exhibit "A."

Section 6. Notice of Adoption.

The City Clerk of the City of Menifee shall certify to the adoption of this Ordinance.

Section 7. Compliance with Notice and Public Hearing Requirements.

This ordinance was reviewed at a noticed public hearing, for which the ordinance and the associated Staff Report were available to the general public for a period of not less than fourteen (14) days prior to the public hearing.

Section 7. Effective Date.

In accordance with Government Code Section 66017(a), this Ordinance shall be in full force and effect sixty (60) days after its adoption.

Section 8. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or the application thereof to any person or circumstance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion thereof be declared invalid or unconstitutional.

Section 9. City Clerk Action.

The City Clerk of the City of Menifee is authorized and directed to cause this Ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation and circulated within the City in accordance with Government Code Section 36933(a) or, to cause this Ordinance to be published in the manner required by law using the alternative summary and posting procedure authorized under Government Code Section 36933(c).

This Ordinance was introduced and read on the 3rd day of December, 2014 and PASSED, APPROVED AND ADOPTED THIS 17th day of December, 2014.

Scott A. Mann, Mayor

Approved as to form:

Jeffrey T. Melching, City Attorney

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Parkland Dedication, Park Development Fees (MITIGATION FEE ACT)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, KATHY BENNETT, City Clerk of the City of Menifee, do hereby attest to and certify the attached Ordinance No. 2014-161 to be the original ordinance adopted by the City Council of the City of Menifee on December 17, 2014 and that said Ordinance was published in accordance with the law on a vote as follow:

Date: _____

Kathy Bennett, City Clerk

Vote:

Ayes:

Noes:

Abstain:

Absent:

EXHIBIT A

Chapter 9.56 Park and Recreation Mitigation Fees for Residential Development Not Requiring a Tentative Map or Parcel Map

Sections:

9.56.010	Purpose and Findings
9.56.020	Authority
9.56.030	Definitions
9.56.040	Limited Use of Fees
9.56.050	Park and Recreation Mitigation Fees
9.56.060	Procedure for Imposition and Payment of Park and Recreation Mitigation Fees
9.56.070	Creation of Park and Recreation Impact Fund
9.56.080	Government Code Compliance
9.56.090	Developments Annexed to the City
9.56.100	Exception for Commercial and Industrial Developments

9.56.010 Purpose and Findings

A. Authorizing Legislation.

This Chapter is adopted to implement the provisions of Sections 66000 et seq. of the Government Code (sometimes referred to hereinafter as the “Mitigation Fee Act”), which authorizes a city to impose Mitigation Fees as a condition of approval on a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.

B. Purpose.

Additional park facilities are needed to accommodate future growth and maintain an acceptable level of the existing park and recreation facilities for all areas of the City of Menifee. New development within the City of Menifee results in increased usage of the existing park and recreation facilities throughout the City, which thereby increases the service requirements and the capital equipment requirements of the City’s parks and recreation facilities. Such increased usage is not limited to new residential subdivisions.

C. Use.

Park and Recreation Mitigation Fees are hereby established on new residential development within the City of Menifee to pay a proportionate share of public facilities related to parks and recreation. The Mitigation Fees authorized by this Section will be used only for defraying costs associated with providing parks and recreation facilities resulting from new development projects, and shall not exceed the estimated cost associated with providing those facilities. The Mitigation Fees are for the purpose of developing new or rehabilitating existing park or recreational facilities, although no such fees will be used to overcome any current deficiency in

park and recreation facilities. A reasonable relationship exists between the Mitigation Fees' use, amount, and need and the residential development project upon which the Mitigation Fees are imposed.

D. Findings

The amount of existing park area in the City exceeds three acres of park area per 1,000 City residents. The enactment of this Chapter shall prevent new residential development from reducing the quality and availability of public services provided to residents of the City by requiring new residential development to contribute to the cost of expanding the availability of park and recreational facilities and amenities in the City.

9.56.020 Authority

This Chapter is enacted pursuant to the authority granted by the Mitigation Fee Act.

9.56.030 Definitions

For the purposes of this Chapter, the terms and words shall have the meaning as defined in Chapter 9.118 "Glossary", except that the following words shall have the meanings set forth below:

- A. "Average Number of Persons Per Dwelling Unit" shall mean average number of persons per household, based on the most recent data available in the form of the federal census and study on the population density in the City. The most recent Average Number of Persons Per Dwelling Unit may be reflected in a City Council Resolution.
- B. "City" shall mean the City of Menifee.
- C. "Developer" shall mean any person who is the owner or authorized agent of an owner of any new development within the City.
- D. "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, but not a permit to operate.
- E. "Dwelling unit" shall include each single family dwelling, second units allowed on single family lots as defined in Chapter 9.42 "Second Dwelling Units", each unit of an apartment, duplex dwelling group or multiple dwelling structure or condominium or planned residential development as a separate habitat for one or more persons or each mobile home space designed to contain a mobile home trailer on a semi-permanent or permanent basis. Single-family residential units, multifamily residential units, and mobile home units shall be defined according to the latest decennial U.S. or state department of finance census. Dwelling unit, for this Chapter, does not include a guest dwelling that does not have cooking facilities.

The amount of the Park and Recreation Mitigation Fees per Dwelling Unit may be adopted by Resolution of the City Council. The Council may adopt and/or revise the fee amount as often as on an annual basis. The Council may adopt and/or revise the fee amount as often as on an annual basis, and in accordance with Government Code Section 66000 et seq.

C. Exemptions.

The Park and Recreation Mitigation Fees established by this Chapter shall not apply to residential development that is subject to the dedication of parkland or the imposition of in-lieu fees, or a combination of both, for park and recreational purposes, as a condition of approval of a tentative map or parcel map pursuant to Chapter 9.55 of this Code, adopted in accordance with Government Code section 66477, sometimes referred to as the Quimby Act.

9.56.060 Procedure for Imposition and Payment of Park and Recreation Mitigation Fees

Park and Recreation Mitigation Fees shall be imposed on new residential development project as a condition of building permit issuance. Prior to the issuance of a Building Permit, the City Manager or his/her designee shall determine the amount of Park and Recreation Mitigation Fees to be paid by the developer. Any fee required under this Chapter shall be paid directly to the City prior to the date of the final inspection of the first dwelling unit, or the date the first certificate of occupancy is issued, whichever occurs first, unless payment at a different time is mandated or authorized by Government Code section 66007.

9.56.070 Creation of Park and Recreation Impact Fund

There is hereby established and created a fund of the City entitled "Parks and Recreation Impact Fund" and all revenues derived from and all monies collected as a Park and Recreation Mitigation Fee, including accrued interest thereon, shall be deposited in such fund. The Parks and Recreation Impact Fund is established for the sole purpose of providing monies for the acquisition, construction, and reconstruction of parkland, playgrounds, community facilities, recreation facilities and equipment, and other capital purposes needed for providing parks and recreation services. The Parks and Recreation Impact Fund shall be administered in accordance with Government Code sections 66000, et seq., including specifically subsections 66001(c)-(e).

9.56.080 Government Code Compliance

Any resolution adopted under Chapter 9.56 of this Code shall be in accordance with the provisions of Chapter 5 of Division 1 of Title 7 of the California Government Code (commencing with section 66000).

9.56.090 Developments Annexed to the City

Where a proposed residential development lies within an area not currently within the City's corporate boundaries but intended to be annexed into the City by the developer,

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the developer shall pay Parks and Recreation Mitigation Fees in accordance with the City's General Plan and in accordance with the provisions of this Chapter, and the General Plan shall be amended within 180 days following approval of the annexation.

9.56.100 Exception for Commercial and Industrial Developments

The provisions of this article shall not apply to any industrial or commercial development.