

Fresno Metropolitan Flood Control District
Ordinance Code: Ordinance 2000-3

CHAPTER 4

DRAINAGE FEES

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4.101.0. PURPOSE. The Board of Directors hereby declares and finds that the development of land substantially accelerates the concentration of surface and storm waters and that it is necessary to provide for the construction of and establish and collect fees to defray all or a part of the actual or the estimated cost of constructing planned local drainage facilities and improvements for the control and safe disposal of surface and storm waters from local drainage areas in order to promote and protect the public safety, peace, comfort, and convenience and the general welfare, and for the accomplishment of the purposes more particularly set forth as follows:

(a) To provide for planned local drainage facilities and improvements within the District required for the control and safe disposal of surface and storm waters from local drainage areas.

(b) To provide for an alternate method of financing construction of planned local drainage facilities and improvements within local drainage areas.

(c) To provide a source of information regarding development of planned local drainage facilities and improvements for present and prospective landowners, residents, developers, and investors in property within the various local drainage areas.

(d) To obviate the menace to public safety arising from inadequate provision for control and safe disposal of surface and storm waters occurring as the result of development of property within local drainage areas.

(e) To prevent deterioration of property values and impairment of conditions making for desirable agricultural, residential, commercial or industrial development, as the case may be, which would result from the failure to construct planned local drainage facilities and improvements.

(f) To prevent deterioration of public streets and other public facilities which would result from failure to construct planned local drainage facilities and improvements.

(g) To limit the impact of surface and storm waters on the traversability of public thoroughfares and rights-of-way to facilitate safe pedestrian and vehicular access for public and private purposes including local commerce, property use and provision of emergency services.

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(h) To provide for collection of fees for construction of planned local drainage facilities and improvements within any local drainage area at the time of the development or division of land, as authorized by Section 66483 of the Government Code of California and the provisions of this Code, except as herein provided; such fees, however, being subject to credits as herein provided for revenues, assessments and other receipts collected with respect to any such parcel or parcels of land for construction of planned local drainage facilities and improvements within any local drainage area.

(i) To effect compliance with such water quality statutes, regulations, and standards as may be enacted by local, state and federal authorities.

4.102.0. DEFINITIONS. Unless the particular provisions or the context otherwise requires, the definitions contained in this Chapter shall govern the construction, meaning, and application of the words and phrases defined, and their derivatives and derivatives therefrom wherever applicable, whenever used in this Chapter.

4.102.1. BOARD OF DIRECTORS. "Board of Directors", as used in this Chapter shall mean the Board of Directors of the Fresno Metropolitan Flood Control District.

4.102.2. DEVELOPMENT. "Development," as used in this Chapter, means any building, structure, or other improvement or the construction, erection, or installation thereof, in, over or upon any parcel of land. "Development" does not include any temporary building, structure or other improvement, or the construction, erection or installation thereof, which under the terms of any permit issued therefore or the provisions of this Code or pursuant to such other limitations of entitlement, shall not be maintained more than one year or, if erected or installed for use in the performance of the work of a construction project, until completion of such work. The term "improvement" shall include, without limitation, any development activity which, as determined by the Manager, materially alters the natural surface of the land or restricts the imperviousness of the soil and includes without limitation paving (concrete, asphalt, oil or other means of soil stabilization) and landscaping.

4.102.3. DIRECTOR. "Director," as used in this Chapter means the Director of the Development Department, or Public Works Department where applicable, of the respective city or County.

4.102.4. DISTRICT. "District," as used in this Chapter, means the Fresno Metropolitan Flood Control District.

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4.102.5. DIVISION. "Division," as used in this Chapter, means the dividing of any parcel of land into one or more lots or parcels, including, but not limited to, a division described and processed as a parcel map division, or any parcel of land which has been so divided.

4.102.6. EXISTING DEVELOPMENT. "Existing Development," as used in this Chapter, means any development, existing within the area of any development or division, on the date of the approval of the map or document evidencing the creation of parcels or issuance of a building permit or other permit for any development.

4.102.7. GROSS ACREAGE. "Gross Acreage," as used in this Chapter, means the area of a parcel of land, or the area of a proposed division, including those portions designated for streets and alleys and including those portions of all abutting streets and alleys measured to the center lines thereof. In the case of construction of a single-family residence occupying a corner parcel, the area of the street abutting the shortest side of such parcel, or one side in the case of a square parcel, shall not be included.

4.102.8. LOCAL DRAINAGE AREA. "Local Drainage Area," as used in this Chapter, means a particular drainage area for which planned local drainage facilities and improvements for the control and safe disposal of surface and storm waters therefrom, and the total estimated costs of constructing such facilities, are set forth in a local drainage plan adopted by the District.

4.102.9. LOCAL DRAINAGE FEES. "Local Drainage Fees," as used in this Chapter, means fees established and levied as provided in this Chapter to pay all or a part of the costs of planned local drainage facilities and improvements and their appurtenances.

4.102.10. LOCAL DRAINAGE PLAN. "Local Drainage Plan," as used in this Chapter, means the Storm Drainage and Flood Control Master Plan, adopted by the District which contains an estimate of the total costs of constructing the local drainage facilities and improvements required by the plan, together with their appurtenances, and a map of each local drainage area showing generally its boundaries and location of the planned local drainage facilities and improvements.

4.102.11. MANAGER. "Manager," as used in this Chapter, means the General Manager of the District.

4.102.12. NET ACREAGE. "Net Acreage," as used in this Chapter, means the area of a parcel of land or area of a proposed division, excluding those portions designated for streets and alleys and excluding all abutting streets and alleys.

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4.102.13. PARCEL OF LAND. "Parcel of Land," as used in this Chapter, means any real property, improved or unimproved, shown on the latest equalized County Assessment Roll as a parcel and reflected by the assessor's parcel maps prepared by the Office of the Assessor of the County of Fresno.

4.102.14. PLANNED LOCAL DRAINAGE FACILITIES AND IMPROVEMENTS. "Planned Local Drainage Facilities and Improvements," as used in this Chapter, means drainage facilities, improvements and appurtenances thereto required by the local drainage plan for a local drainage area. The term facilities and improvements shall include, without limitation, conduits, drainage channels, drainage retention and recharge basins, real property and rights in real property and improvements and appurtenances incidental thereto, all as may be required for the control and safe disposal of surface and storm waters from a local drainage area.

4.102.15. PLANNED LOCAL DRAINAGE FACILITIES FUND. "Planned Local Drainage Facilities Fund," as used in this Chapter, means a separate fund established by the District for a local drainage area, into which all local drainage fees collected on the property within such local drainage area shall be deposited, and the monies in which shall be expended solely for acquisition or construction, or reimbursement for acquisition or construction of planned local drainage facilities and improvements within the local drainage area for which such fund was established.

4.102.16. ZONING ORDINANCE. "Zoning Ordinance," as used in this Chapter, means the Zoning Ordinance of the respective city or County.

4.103.0. LOCAL DRAINAGE FEES REQUIRED; WHEN PAYABLE.

(a) Except as otherwise provided in this section, a local drainage fee shall be paid on each parcel of land in a local drainage area prior to the commencement of the work of any development thereon or, in the case of any division of a parcel of land, prior to the approval of the map or document evidencing the creation of the parcels. The applicable fee shall be that most recently established by the Board of Directors prior to approval of the final subdivision map, or map evidencing the creation of parcels, or issuance of a development permit, whichever shall apply.

(b) In the case of divisions which at the time of approval are zoned for industrial use, and for all other divisions which do not require a final map, the following applies:

(1) The minimum local drainage fee payable shall equal the sum of the following:

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(i) The local drainage fees computed pursuant to Section 4.105 of this Chapter for all areas within such division dedicated and improved for streets and alleys prior to, concurrently with or as a condition of the recording of the final map, approval of the map or document evidencing the creation of parcels, or issuance of a development permit. Such area requiring drainage fee payment shall include any portions of abutting streets and alleys measured to the centerline thereof;

(ii) The local drainage fees computed pursuant to Section 4.105 of this Chapter for all areas of existing development. The minimum area for which the fee shall be calculated must equal or exceed the minimum area established for the applicable zoning district in the Zoning Ordinance; provided that any remaining area for which a fee is not required pursuant to this section also equals or exceeds the minimum area established by the Zoning Ordinance for the applicable zoning district. For all parcels within the "AE" or "RR" zoning districts, or for a use which would create a change in the natural surface of the land which is equivalent to that which would be created by the normal or usual development of land within the "AE" or "RR" zoning districts, such minimum area shall be one (1) acre and such remaining area shall equal or exceed one (1) acre;

(iii) The local drainage fees computed pursuant to Section 4.105 of this Chapter on all parcels authorized for creation under the applicable Ordinance Code governing the division of land for the respective city or County, which (i) do not require a final map, (ii) are zoned for single family residential uses and, (iii) contain a net acreage of 40,000 square feet or less.

(2) If planned local drainage facilities or improvements are required within the limits of, or are necessitated by such division or a phase thereof, the minimum local drainage fee payable shall equal the greater of (i) the cost of such facilities or improvements, or (ii) the minimum fee determined pursuant to Section 4.103, subsection (b) (1) above.

(3) The balance of the fee obligation otherwise required by the provisions of this Chapter, and not required to be paid pursuant to the preceding provisions of Section 4.103, subsection (b) may be deferred.

(4) Local drainage fees deferred under the provision of this subsection shall be payable in the amounts determined by the provisions of this Chapter prior to the issuance of a development entitlement for the lands subject to such deferment.

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(5) The deferment of drainage fees pursuant to this section shall not preclude the requirement to dedicate as provided in Section 4.103 subsection (d)(1) herein.

(c) In the case of additional development of a partially or fully developed parcel the following shall apply:

(1) Except as provided for in Section 4.103 subparagraph (e) of this Chapter the area of an addition, replacement, reconstruction or the construction of separate structures or other improvements within a developed or undeveloped area of a fully or partially developed parcel for which a local drainage fee or assessment has not been fully paid shall be deemed a parcel of land for the purposes of this Chapter and a local drainage fee is payable thereon when such area equals or exceeds one-thousand (1,000) square feet. When the area of such addition, replacement, reconstruction or other improvement or the accumulation of such additions or other improvements made after March 15, 1969, equals twenty-five per cent (25%) or more of the development existing on such parcel as of March 15, 1969, the local drainage fee shall be payable on the area of all such additions, replacements, reconstruction or construction and the area of development existing as of March 15, 1969.

(2) When the fee due under this paragraph for the previously developed area exceeds the sum of five thousand dollars (\$5,000), and equals or exceeds the fee due on the current development activity, the property owner may request and the District may permit the payment, pursuant to a secured agreement in a form approved by the Board of Directors, of the portion of the fee related to the previously developed area in accordance with the provisions of this paragraph. Twenty percent of the local drainage fee for the previously developed area or one hundred dollars (\$100.00), whichever is greater, shall be paid to the District prior to the issuance of any permit for any development thereon and an agreement shall be executed with the District to pay the unpaid balance in four (4) equal annual installments, beginning one year from the date of issuance of such permit.

(3) Credits for fees or assessments previously paid shall be granted in accordance with Section 4.106, subsection (c) hereof.

(d) When determined necessary by the District in conjunction with a development or division the following shall be required:

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(1) The design, dedication and construction of planned local drainage facilities and improvements located within or necessitated by a development or division, whether such development is located within an area of the local drainage plan for which fees have been established, or located in an area of such plan for which fees have not been established; such dedication and construction to include easements, rights-of-way, fee interest, other interests in real property; and, all planned local drainage facilities and improvements and, appurtenances thereto, inclusive of grading and surface water conveyances; or,

(2) The payment of the local drainage fee required pursuant to this Chapter, when it is determined by the District the design, dedication and construction of planned local drainage improvements and facilities is not required; or

(3) Payment of a portion of the local drainage fee required and the design, construction and dedication of planned local drainage facilities and improvements, as described in subparagraph (d)(1) hereinabove.

(4) Measures to effect compliance with the storm water quality provisions of the Federal Water Pollution Control Act (Clean Water Act), the California Porter-Cologne Act and such other storm water quality statutes and regulations as may be enacted by local, state and federal authorities when determined by the District to be necessary in conjunction with such development or division. For the purposes of this Ordinance the measures required pursuant to this paragraph are not creditable under Section 4.106.0 hereof.

(e) Exceptions. Local drainage fees are not payable for the performance of the following items of work:

(1) Except in the case of a division, any development work which consists solely of the construction, erection, or installation of:

(i) Fences, pole lines, underground conduits, or pipelines, or similar developments which, as determined by the Manager do not materially alter the natural surface of a parcel of land; or

(ii) Concrete curbs, gutters, sidewalks, driveway approaches, paving or other street improvements undertaken in the absence of other related development as defined herein, within any street or alley.

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(2) Any development consisting solely of additions or alterations to any single-family residential dwelling or its accessory buildings or additional development other than additional dwellings on a developed single-family residential parcel.

(3) Any reconstruction or replacement of a single-family residence destroyed by fire or because of condemnation, provided that this exception shall not apply in the event that:

(i) The use of the parcel or any portion thereof at the time of reconstruction or replacement is for other than single-family residential; or

(ii) Reconstruction or replacement does not occur within twelve months;
or

(iii) The ownership of the parcel is changed following the occurrence which requires reconstruction or replacement thereof.

(4) The construction of structures or improvements on parcels within the "AE" or "RR" zone districts and having a gross area of five (5) acres or more when such structures are used solely for single family residential uses consistent with the "AE" zone district or for the support of the raising of tree, vine, field, forage or other plant life crops of all kinds, or the maintenance, breeding and raising of poultry or livestock on the parcel.

(5) The creation of any parcel of land within the "AE" zone district and having a gross acreage of five (5) or more acres when such parcel of land is used primarily for agricultural pursuits as defined in subsection (e) (4) of this Section.

(6) The exceptions provided for in this subsection (e) apply only to payment of drainage fees and not to the design, dedication, and construction of planned local drainage facilities and improvements as may be required pursuant to Section 4.103.0 subsection (d)(1) herein.

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(f) Government Agency. Payment of the local drainage fee upon division of land divided by a governmental agency engaged in such activity may be deferred upon request filed with the District by the governmental agency at the time of development of any undeveloped lot or parcel created in said division, subject to the conditions herein specified. A governmental agency, for the purposes of this deferment, is defined as one which is created under the provisions of either federal, state or local enabling legislation and which is acting under a program in which payment of the local drainage fee would not be an eligible cost.

(1) The deferment authorized herein shall be allowed only in the event said governmental agency enters into a written agreement with the District which shall provide:

(i) That the fee shall otherwise be paid pursuant to the provisions of this Chapter;

(ii) That the agreement creates a valid lien upon such parcel to the extent of the fee (such lien may be subordinated at the discretion of the Manager, and the form and substance of the agreement, procedures documents, covenants, etc., necessary to place the agreement and lien into effect shall all be determined by the Manager, subject to the approval of the District General Counsel);

(iii) That said agreement shall provide that the owner of each lot or parcel created as a result of said division shall agree to pay all court costs and attorney fees and waives any and all defenses, legal or equitable, other than liquidated monetary set-offs against the District, if an action at law or foreclosure suit is brought to enforce payment of the fee or recovery of the fee through the lien.

(2) Said governmental agency will pay or provide for payment of the local drainage fee on any developed lot or parcel at the time of division except that in the event of ownership by said governmental agency of said developed parcel or parcels, payment of the local drainage fee thereon shall be made at the time of sale of said developed lot or parcel by the governmental agency.

(3) Said governmental agency will give actual notice of the lien described above to the purchaser of any lot or parcel created as a result of such division, except that failure by said governmental agency to provide actual notice to the purchaser shall not affect the lien upon said parcel or portion thereof as sold or the liability by the owner thereof to pay any local drainage fee thereon as herein provided.

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(g) As to any portion of land included within a parcel map for which the fee has not been deferred under subsection (b) of this section, the fee obligation established by this Chapter may be deferred by the Manager where such divisions of land are required by court order.

(1) All owners who desire to defer fees under this subsection shall enter into an agreement with the District which shall require the payment of such deferred fee at the earliest of the following occurrences:

(i) The sale or transfer of any such parcel or portion thereof;

(ii) The filing of a final map or parcel map on any portion of such parcel;

(iii) The issuance of a building permit or special permit for any development entitlement on or for any portion of such parcel.

(2) Fees deferred under this subsection shall be paid at the rates in effect when such fees become due and payable.

(h) **Installment Payments.** In cases where all of the following conditions are met, the property owner may request and the District may permit the payment of drainage fees, pursuant to a secured agreement in a form approved by the Board of Directors, in five (5) installments:

(1) The amount to be paid in installments shall be limited to the excess of the drainage fee obligation for the development above the cost of any planned local drainage facilities required to be constructed as a condition of the development, such excess amount hereinafter referred to as the "net fee".

(2) The drainage fee rate for the development for which the installment payments are requested shall be greater than the rate for the same zone district within the Zone 3 drainage fee schedule which is in effect at the time of the request, except in the case of industrial development occurring within a designated redevelopment, enterprise or international trade zone area in which case the conditions of this subparagraph 2 shall not apply.

(3) The net fee shall be greater than \$25,000.

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(4) The installment payment provision of this section may not be used when expenditure by the developer of an amount of less than 150% of the total fee obligation in construction of planned local drainage facilities would provide permanent drainage service to the development.

(5) For the drainage area in which the fee obligation is incurred, no debt service obligations of the District, which precludes the deferral of drainage fees through installment payments, such as but not limited to, repayment of loans, developer agreement reimbursement obligations, or bonded obligations, shall exist at the time of execution of the secured agreement providing for the installment payments.

(6) The land use entitlement agency within which the development requesting the installment payment of net fees is located shall have in effect an enforcement policy which precludes issuance of additional development entitlements for parcels on which current violations or defaults of these installment payment provisions exist.

The Board of Directors may, upon its discretion, or upon the request of the Board of Supervisors or the City Council of the City of Fresno or the City of Clovis and upon a two-thirds (2/3) vote of the Board of Directors, grant exceptions to the requirements of subsections (2) and (3) of this section for those projects deemed by the requesting agency and the Board of Directors to be of special community benefit.

Installment payments shall be made in accordance with the following:

(1) Payments shall be made in not more than five installments. The initial payment shall be made prior to final approval of the development. The remaining four (4) payments shall be due and payable and be made at no greater than twelve (12) month intervals beginning from the date of the initial payment.

(2) The amount of the installment payments shall be established based on not more than five (5) equal payments of the total net fee calculated at the drainage fee rates in effect at the time of; i) approval of the final subdivision map or document evidencing the creation of the parcels in the case of divisions or; ii) issuance of a building permit in the case of development.

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(3) Interest shall be paid at the time of each installment payment on the outstanding unpaid balance, such interest computed at the Prime Rate identified by the Wall Street Journal as the base rate of corporate loans posted by at least 75% of the nations thirty (30) largest banks, plus one percent (1%). Such interest rate shall be fixed at the rate in effect at the time of execution of an agreement with the District providing for installment payments.

(4) An administrative fee totaling the greater of \$500 or three percent (3%) of the total net fee shall be paid; provided however such administrative fee shall not exceed \$4,000. The fee shall be paid in not more than five installments at the time the installment payments for the net fee are made.

(5) In the event that the ownership of any or all of the parcel which is the subject of an agreement for installment payments pursuant to this Section 4.103.0(h) is sold or transferred, any remaining unpaid balance of the net fee pertaining to such parcel shall be due and payable.

The Board of Directors may suspend the use of the provisions of this Section (h) upon a two thirds (2/3) vote of the Board of Directors when determined by the Board of Directors that further use of installments payments pursuant to this Section (h) would adversely impact the financing of construction of planned local drainage facilities.

(i) Any agreement required by Section 4.103.0(c), 4.103.0(g) or 4.103.0(h) of this Chapter shall constitute a valid lien upon such parcel. The lien may be subordinated at the discretion of the Manager. The form and substance of the agreement, procedures, documents or covenants to place the agreement and lien into effect shall be determined by the Manager subject to the approval of the District General Counsel. Upon default of such agreement, the unpaid balance of such fees shall immediately become due and payable, and immediate collection may be pursued by the District through any available lawful means including placement of the lien amount on the next annual property tax bill of the subject property. The owner of the parcel shall agree to pay all court costs, attorney fees and interest at the legal rate from date of delinquency and, further, shall waive any and all defenses, legal or equitable other than liquidated monetary set-offs against the District if an action at law or foreclosure suit is instituted to enforce payment of the fee.

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4.104.0. DEVELOPMENT WITHOUT PAYMENT OF LOCAL DRAINAGE FEE PROHIBITED. No person shall divide or construct, erect, install or create, or cause or permit to be divided or constructed, erected, installed or created, any development on any parcel of land on which the local drainage fee required by this Chapter has not been paid; and no building permit or other permit for any development shall be issued unless the required local drainage fee has been paid or provisions for payment made with the District.

4.105.0. FEE SCHEDULE. COMPUTATION OF FEE.

(a) The Board of Directors shall establish by resolution, the schedule of per-gross-acre fees for each local drainage area calculated to provide the sum of money necessary to pay the estimated total costs, as set forth in the local drainage plan, of the planned local drainage facilities and improvements for such planned local drainage area. Such schedule shall be conditioned and based on the following findings hereby made by the Board of Directors:

(1) That the planned local drainage facilities and improvements for each local drainage area are consistent with the Fresno-Clovis metropolitan area general plans, and the local drainage plan.

(2) That the development of property within each local drainage area will require construction or acquisition of the planned local drainage facilities and improvements described in the local drainage plan and that the fees are fairly apportioned within each local drainage area on the basis of benefits conferred on property developed or to be developed or on the need for planned local drainage facilities and improvements created by proposed or existing development of property within the local drainage area.

(3) That drainage facilities planned with respect to each local drainage area which are in addition to any existing local drainage facilities and improvements serving such local drainage area at the time of adoption of the local drainage plan are necessary to complete the planned local drainage facilities and improvements for such local drainage area.

(b) The schedule of fees shall be those amounts established by resolution of the Board of Directors adopted prior to the effective date of this Ordinance and shall remain in effect until the next February 28th. Effective the next March 1 after the effective date of this Ordinance and each succeeding March 1 thereafter, said schedule of fees shall be adjusted in accordance with the following criteria:

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(1) On January 1 of each year the Manager shall review the current National Engineering News Record Construction Cost Index (ENRCCI) for California cities. When such index differs from said index for the preceding January 1, the factor of increase or decrease shall be applied to the schedule of fees. Such factor shall be computed by dividing the ENRCCI for the current January 1 by that pertaining to the pervious January 1. The individual local drainage fee rates shall be multiplied by said factor to determine the adjusted schedule of fees.

(2) The Manager shall add to the schedule of fees, the local drainage fee rates for new planned local drainage areas identified in the local drainage plan.

(3) If in the determination of the Manager the adjustment of the schedule of fees produced by the procedure in paragraph (1) of this subsection (b) is not representative of the actual change in costs of the planned local drainage facilities and improvements, the Manager may, in lieu of the procedures set forth in said paragraph, compute a new schedule of fees for adoption by resolution of the Board of Directors.

(4) In the event of the adoption of a new schedule of fees by resolution of the Board of Directors, such new schedule shall become effective immediately upon the adoption thereof by the Board of Directors or as soon thereafter as provided by law. The adjustment of such new schedule as provided in paragraph (1) of this subsection (b) shall begin the January 1 next occurring after adoption of such new schedule.

(c) The rates per gross acre used to compute local drainage fees levied and collected pursuant to this Chapter for parcels of land located in any local drainage area shall be those rates set forth for such local drainage area in the schedule of per-gross-acre fees established by resolution of the Board of Directors as set forth in this section. For parcels of land located, pursuant to the Zoning Ordinance, in the respective zoning districts identified in said schedule of per-gross-acre fees, the per-gross-acre fee shall be the sum identified with such zoning district in such schedule.

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(d) In such cases wherein the provisions of this Chapter would require payment of a local drainage fee and the parcel of land is located in a zoning district for which a rate per-gross-acre has not been adopted by the Board of Directors, the Manager shall calculate and shall levy an interim fee using the cost distribution formula for the zoning district within the subject local drainage area which in the Manager's determination is the most similar to the zoning district for which a rate has not been adopted, but which is not less than the lowest per-acre rate identified in the rate schedule for the local drainage area in which such parcel of land is located. The Board of Directors shall, as soon as practical, thereafter amend the schedule of per-gross-acre fees identifying therein the zoning district for which a rate has not been adopted, and the fees per-gross-acre associated therewith and any deviation from the interim fees which shall have been paid shall be adjusted by a further payment to the District or refund to the owner.

(e) The local drainage fee applicable to any parcel of land or division shall be the product of the gross acreage of the parcel or division multiplied by the rate or rates per-gross-acre applicable to the zoning district, the local drainage area and the local drainage area zone within which the parcel or division is located as specified within the fee schedule resolution adopted pursuant to this section; provided however, the local drainage fee applicable to any parcel or division of land which has been included in an assessment proceeding which proceeding includes the levy and subsequent crediting of the local drainage fee obligation pursuant to Section 4.106 of this Chapter and where such assessment includes the incidental costs of such proceedings, said fee and any related credit shall be increased by an amount equal to the proportionate share of the incidental costs of such assessment proceedings assigned to such parcel, as determined by the Manager from the records of the subject assessment proceedings.

(f) When a development is proposed on only a portion of any parcel of land, the Manager may designate on the approved plot plan the portion of such real property on which the development is to occur as the area to be developed. The payment of the local drainage fee shall be limited to such designated area subject to the following conditions:

(1) Such designated area shall include all area to be the subject of activity which materially alters the natural surface of the land or restricts the imperviousness of the soil, including landscaping, paving and other means of soil stabilization, and grading and filling.

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(2) Such designated area shall equal or exceed the minimum area established for the applicable zoning district identified in the Zoning Ordinance. For all parcels within the "AE" or "RR" zoning districts, or for a use which would create a change in the natural surface of the land which is equivalent to that which would be created by the normal or usual development of land within the "AE" or "RR" zoning districts, the minimum area for the purposes of this subsection shall be one (1) acre.

(3) The area of such parcel remaining undesignated shall equal or exceed the minimum area established for the applicable zoning district identified in the Zoning Ordinance. For all parcels rural residential within the "AE" or "RR" zoning districts, or for a use which would create a change in the natural surface of the land which is equivalent to that which would be created by the normal or usual development of land within the "AE" or "RR" zoning districts, the minimum area for the purpose of this subsection shall be one (1) acre.

(4) In cases where there is existing development on such parcel of land, payment of the local drainage fee shall also be subject to the provisions of Section 4.103.0, subsection (c).

(g) When any development would create a greater or lesser amount of change in the natural surface of the land than would be created by the normal or usual development of land in a zoning district, an appropriate fee shall be calculated by using the rate or rates for the zoning district within the subject local drainage area which is most similar in character to the proposed development. Payment of such fee or the construction of planned local drainage facilities and improvements, or a combination thereof, shall be a condition of any permit which is required for construction or use of such development.

(h) When the local drainage fee applicable to any parcel of land has been paid pursuant to this Chapter, or shall have been paid through assessment in a specific assessment proceeding, and the use of such parcel of land is changed to a use which, under the then-current fee schedule, requires a higher local drainage fee, or improvements are made to the parcel which create a greater change in the natural surface of the land than would be created by the normal or usual development of land in the zoning district, then such parcel of land shall be subject to payment of an additional fee which shall be the fee applicable to such parcel of land in its changed use under the fee schedule in effect at the time the additional fee is payable less the total of any credits allowed under Section 4.106.

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4.106.0. CREDITS, REIMBURSEMENTS FOR FEES AND FACILITIES PREVIOUSLY PAID AND INSTALLED. CONDITIONS.

(a) In the computation of the local drainage fee payable because of the development or division of any parcel of land, a credit shall be allowed for planned local drainage facilities and improvements dedicated or constructed with respect to such parcel. Such credits are limited to the actual cost of lands dedicated in fee title, or the actual cash expenditures for the construction of local drainage facilities constructed and still in existence and use in any street, alley, or public easement, and not purchased or constructed by special assessment proceeding shall be allowed, subject to the following conditions and limitations:

(1) Facilities considered for such credits shall have been constructed in conformance with the standards of the District in effect when such facilities were constructed.

(2) The Manager shall certify that such facilities are in conformance with, or beneficial for use in connection with, the planned local drainage facilities and improvements installed or to be installed in the local drainage area.

(3) The credit allowed shall not exceed the cost of such facilities or improvements, as determined by the Manager from actual cost records or by applying estimates of construction or real estate costs prevailing at the time such facilities were originally purchased or constructed, provided that no credit shall be allowed because of public easements or rights-of-way, the dedication of which have been or would be required by the District or other public agency in conjunction with development or divisions as defined in this Chapter.

(4) The facilities shall have been dedicated or constructed and paid for with respect to the parcel for which credit is claimed and are located in or will serve the planned local drainage area within which is located the parcel for which credit is claimed.

(5) Proof to the satisfaction of the District's Board of Directors shall be made by the person claiming such credit hereunder of the amount of the actual cost or cash expenditures incurred for which credit is claimed.

(6) The District shall have acquired ownership of the facilities without cost.

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(7) When the facilities for which credit is claimed benefit more than one parcel and only a portion of the total allowable credit is claimed, the District may, in the absence of an agreement among the owners of the subject parcels eligible for such credit, estimate the total cost of the facilities at the time of construction and apportion the total credit allowable for such facilities among the benefiting parcels in a manner that the District in its sole discretion shall deem equitable.

(8) In the event the actual cash expenditures, as determined by the Manager in paragraph (3) of this subsection (a), exceed the total local drainage fee payable because of the development or division of any parcel of land, District shall contract with the developer or divider to reimburse such excess expenditures. Such reimbursement shall be subject to the following conditions and limitations:

(i) Such reimbursements shall be paid to the developer or divider from local drainage fees received pursuant to subsequent development or division of other parcels of land within the local drainage area served by the planned local drainage facilities and improvements for which such reimbursement is due.

(ii) In those local drainage areas in which more than one reimbursement contract is concurrently in existence, the order of reimbursement shall be based upon the date of receipt by District of the submittals set forth in paragraph (vii) hereof. Reimbursement shall not be paid pursuant to a later reimbursement contract within a local drainage area until any previous reimbursement contract within said drainage area is fully reimbursed. Reimbursement shall not be paid as to any reimbursement contract until any external debt obligation of the local drainage area, which is to be paid from the drainage fees of the subject local drainage area is paid.

(iii) The payment of such reimbursements is to be made semi-annually, in amounts determined by the Manager.

(iv) Should there not be sufficient subsequent local drainage fees available, or should the facilities required to provide the level of drainage service prescribed by the local drainage plan not be available, by a date twenty (20) years from the date of receipt by District of the submittals set forth in paragraph (vii) hereof, the initial reimbursement period and any remaining obligation of the District to reimburse such excess expenditures shall expire.

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(v) The total reimbursement to be paid pursuant to this subsection (a) shall not exceed ninety-five per cent (95%) of the total excess expenditures; the District shall retain five per cent (5%) from each reimbursement as an administrative records and services charge.

(vi) Nothing herein shall preclude the more frequent payment of reimbursements or the partial payment of reimbursements when sufficient funds are determined by the Manager to be available and all other conditions of this subsection (a) have been met.

(vii) The developer or divider shall submit to District, within ninety (90) days of notice by the District, the reproducible as-built plans of said facilities, the project accounting reflecting final costs of the eligible items and any balance due of the final local drainage fee determined pursuant to this Chapter. Credits and reimbursement of excess expenditures shall not be granted pursuant to this section if the submissions required by this paragraph are not made.

(9) No credit will be allowed for measures required for compliance with storm water quality regulations pursuant to Section 4.103.0(d)(4) hereof.

(10) No credit will be allowed for planned local drainage facilities and improvements constructed by public agencies when they are funded solely by grants obtained for the purpose of constructing planned local drainage facilities.

(b) Credits for assessments previously levied for planned local drainage facilities and improvements by special assessment proceeding shall be allowed, subject to the following conditions and limitations:

(1) Such facilities shall have been constructed in conformance with the standards of the District in effect when such facilities were constructed.

(2) The Manager shall certify that such facilities are in conformance with or beneficial for use in connection with the planned local facilities and improvements installed in the local drainage area.

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(3) The credit allowed shall be equal to the amount of the assessment and any supplemental assessment levied upon the parcel of land exclusive of incidental expenses except as provided pursuant to Section 4.105.0(e) of this Chapter, which was paid in cash or which became security for a bond or bonds issued in the special assessment proceedings. If one assessment was levied for drainage facilities and other improvements in the same proceeding, the Manager shall determine, from the engineer's report in the assessment proceeding, if available, otherwise on cost estimates applied by the Manager, the proportion of the assessment attributable to such facilities, and the amount so determined by him shall be the credit allowed.

(c) If a local drainage fee was paid on all or a portion of the parcel of land pursuant to this Chapter and an additional local drainage fee is payable under any provision of this Chapter, a credit shall be allowed equal to the amount previously paid.

4.107.0. APPEALS.

(a) In the case that the amount of any local drainage fee shall be disputed, the District, shall allow such fee to be paid under protest. Such protested fee shall be reviewed by the Manager and the correct amount thereof determined according to law and the District shall bear any cost of litigation incurred by it in the defense of such a dispute.

(b) The owner of land proposed for development or division, or his representative designated in writing, may appeal any other requirement of the District under this Chapter. Any person appealing shall file a written notice of appeal with the secretary of the District within ten (10) days of the action of the District from which the appeal is taken. Upon the filing of such an appeal, the appeal board, which for purposes of this Chapter shall be the Board of Directors, shall set the matter for hearing. The hearing shall be held and a decision rendered by the appeal board within forty (40) days after the date of filing the appeal. In the case of appeals taken pursuant to this Ordinance, the decision of the Board of Directors shall be final.

(c) In the case of appeals taken pursuant to the Ordinance Code of the designated cities or the County, the owner or representative specified in subsection (b) of this section may appeal from the action of the appeal board to the appropriate council of the designated city or the Board of Supervisors of the County. Any such appeal shall be filed in writing, on a form provided by the specific city or the County within ten (10) days after the action of the appeal board from which the appeal is being taken.

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(d) After the filing of such an appeal, the appropriate city council or County Board of Supervisors shall hold a hearing thereon within thirty (30) days after the date of filing of the appeal. Within ten (10) days following the conclusion of the hearing, the council or Board of Supervisors shall render its decision on the appeal. Such decision shall be final.

4.108.0. DISTRICT AS AGENCY TO DESIGN AND INSTALL FACILITIES. The District is hereby designated as the public agency which shall design, acquire, construct, and install, in territory which is within the District, the planned local drainage facilities and improvements specified in the local drainage plan, other than street facilities.

4.109.0. TRANSFER OF FUNDS TO DISTRICT.

(a) In such cases in which the fees payable under this Chapter are collected on behalf of the District by designated cities or the County, the controller of the city or the Auditor-Controller of the County shall transfer to the District, on the fifteenth (15) day of each month, all local drainage fees collected during the preceding calendar month. Where a local drainage area lies wholly or partially outside the boundaries of the District, the city or County may expend from the planned local drainage facilities fees collected within such local drainage area such amounts as the city or County shall require for the design, acquisition, construction or installation of planned local drainage improvements and facilities within the portion of such local drainage area outside the District in accordance with the local drainage plan. For the purposes of this section, the controller of the city or Auditor-Controller of the County shall withhold from transfer to the District all or a part of the funds in the planned local drainage facilities fund of any such local drainage area which lies partially or wholly outside the boundaries of the District, provided, that upon annexation to the District of the territory comprising any such local drainage area, and after the city or County has been reimbursed for all such expenditures therein, the controller or Auditor-Controller shall transfer to the District under the same conditions as transfers authorized by this section, all monies remaining in such planned local drainage facilities fund. The city or County shall concurrently transfer to the District fee title to all facilities purchased or constructed from drainage fees pursuant to this section.

(b) City or County shall be reimbursed its actual cost of collecting, holding, and transferring local drainage fees collected pursuant to this code, such reimbursement to occur as follows:

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(1) City or County shall retain all interest earnings accrued on the local drainage fee receipts from the date of receipt to the date of transfer to the District; provided that such transfer occurs as provided in Section 4.109.0(a) of this Chapter, and such interest or an acceptable estimate thereof, shall be credited against city's or County's cost of collecting, holding, and transferring such fees.

(2) City or County costs to collect, hold, and transfer such fees not fully covered by the provision of Section 4.109.0(b)(1) of this Chapter shall be billed to the District by city or County not less than annually and shall be paid by District within 45 days of such billing.

(3) All reimbursements credited to and paid to city or County by District pursuant to this section, shall be initially allocated to the applicable City Planning and Development Services Department, City Development Department or the County Public Works and Development Services Department.

4.110.0. ADMINISTRATION AND ENFORCEMENT. In such cases in which designated cities or the County request the District to administer and enforce the drainage fee ordinance of such agency, the collection of local drainage fees and the imposition of requirements under the provisions of such ordinances shall not be commenced until the District shall have entered into an agreement with such city or County for administration and enforcement, which shall include, without limitation, the following provisions:

(a) The District shall accept delegation of the duty and shall review all development, and divisions for compliance with the local drainage plan and shall prepare and submit investigations and reports on the design and improvements of such development and divisions and shall impose such requirements and condition thereon necessary to effect compliance with and implementation of such plan.

(b) The District shall effect the design, acquisition, construction, installation, operation and maintenance of the planned local drainage facilities and improvements set forth in the local drainage plan.

(c) District shall make all computations of local drainage fees payable pursuant to said Ordinance, shall make all determinations of construction and dedication requirements, exemptions or deferrals, and shall, upon request, promptly furnish such information.

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(d) The designated city or County shall, collect and transfer to District or may designate the District to collect the local drainage fees required pursuant to said Ordinance and shall impose such conditions and requirements identified by District for development and divisions pursuant to the provisions of said Ordinance.

(e) The designated city or County shall submit, or require to be submitted, to the District, duplicate copies of all subdivision maps, parcel maps, site plans, and other such forms representing development or division proposals submitted to the city or County for review and approval for which local drainage fees must be calculated, or requirements and conditions of approval must be determined.

(f) The District shall establish for each local drainage area a planned local drainage facilities fund into which all funds transferred to the District for such local drainage area shall be deposited, and shall expend the funds therein solely for acquisition or construction or reimbursement of its general fund for acquisition or construction of planned local drainage facilities and improvements within such local drainage area, except that any surplus remaining after final completion of such planned local drainage facilities and improvements may be applied to maintenance of facilities in reduction of any annual assessment taxes of the District for maintenance levied by the District on properties in such local drainage area.

(g) The District shall keep and maintain accurate records of local drainage fees paid or payable on each parcel of land in the District to the extent necessary to permit an expeditious determination of (1) the amount of any drainage fee paid or payable, (2) the required collection of fees as provided by said Ordinance, (3) the payment of any reimbursements required by Section 4.106 hereof.

(h) The District, in the event it shall order the construction of planned local drainage facilities and improvements pursuant to special assessment proceedings, shall apply as a contribution to the amount of the assessment levied therefor upon any parcel of land in the assessment district, the amount of any credit allowed such parcel under Section 4.106.0 of this Chapter.

(i) The District may recognize implementation of and compliance with procedures and requirements of the drainage fee ordinance of the City of Fresno, City of Clovis and the County of Fresno as compliance with procedures and requirements of this Ordinance.

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(j) The District shall defend and indemnify and hold such designated city or County harmless from any dispute, claim or lawsuit arising out of any requirement for the acquisition, dedication, installation, or construction of planned local drainage facilities and improvements, or the payment of any local drainage fee or calculation of such fee, which the District may impose or the designated city or County may impose at the request of the District pursuant to the provisions of this Ordinance as a condition of approval of any development, final subdivision map, or map or document evidencing the creation of parcels.

4.111.0 VIOLATION - PENALTY. The penalty for violation of any of the provisions of this Chapter shall be as prescribed in Chapter 10 of this Ordinance Code.

Date Last Amended: December 20, 2000