

**ORDINANCE NO. 2019 - \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE,  
CALIFORNIA, ADDING CHAPTER 16.78 TO THE LAKE ELSINORE MUNICIPAL  
CODE TO PERMIT THE ESTABLISHMENT OF A FEE WITHIN AN AREA OF  
BENEFIT TO DEFRAY THE COSTS RELATED TO THE CONSTRUCTION OF  
MAJOR THOROUGHFARES AND BRIDGES**

**WHEREAS**, the City of Lake Elsinore has experienced significant growth which is anticipated to continue and which is expected to impose additional demands on the City's traffic and circulation system; and

**WHEREAS**, the design and construction of additional thoroughfares, bridges and related facilities is necessary to meet the projected transportation and traffic needs resulting from anticipated development; and

**WHEREAS**, the California Government Code Section 66484 *et seq.* authorizes cities to adopt local ordinances requiring the payment of a fee as a condition of approval to development for the purposes of defraying the actual or estimated cost of constructing major thoroughfares or bridges consistent with the Circulation Element of the city's General Plan and subject to certain procedural requirements.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE ELSINORE DOES  
HEREBY ORDAIN AS FOLLOWS:**

**Section 1.**     Authority. This Ordinance is adopted pursuant to Section 66484 of the California Government Code.

**Section 2.**     Chapter 16.78 of the Lake Elsinore Municipal Code is hereby adopted to read as follows:

**“Chapter 16.78           Major Thoroughfare and Bridge Fee Program.**

**Section 16.78.010   General provisions.**

**A.     Authority.** This Chapter is adopted pursuant to Section 66484 of the California Government Code which provides for the payment of fees to defray the actual or estimated costs for the construction of bridges and major thoroughfares as a condition of approval of a final map or as a condition of issuing a building permit.

**B.     Area of Benefit.** Whenever land that is proposed to be divided or for which a building permit is sought, lies within the boundaries of an “area of benefit”, as hereinafter defined and established, a fee in the amount specified by the Final Resolution (as herein after defined) establishing the area of benefit as adopted or thereafter amended, shall be required as a condition of approval and recordation of any final map or parcel map or of the issuance of a building permit. No property shall be assessed a fee under this Ordinance for both a final map or parcel map and a building permit.

**Section 16.78.020   Definitions.**

The terms used in this chapter have the meaning set forth below:

“Area of benefit” means a specified area established pursuant to the procedures set forth in this Chapter 16.78 wherein it has been determined that the real property located therein will benefit from the construction of a major thoroughfare or bridge project.

“Bridge” means a bridge identified in the Circulation Element and the transportation or flood control provisions of the General Plan which identify railways, freeways, streams, or canyons for which bridge crossings are required on the General Plan or local roads, if the Circulation Element, transportation or flood control provisions have been adopted by the local agency 30 days prior to the filing of a map or application for building permit.

“Construction” means preliminary studies, design, acquisition of right-of-way, administration of construction contracts and actual construction, including, but not limited to, the engineering and environmental clearance, bid administration, design and construction of medians and sidewalks (including landscaping) and other facilities which are a part of said bridges and major thoroughfares.

“Final Resolution” means the resolution defined in Subsection D.1. hereof, which resolution designates the area of benefit and assesses the fee permitted by this Section.

“Initial Resolution” means the resolution defined in Subsection F.1. hereof, which resolution sets the date of the public hearing on the fee permitted by this Section.

“Major thoroughfare” means those major thoroughfares identified in the Circulation Element of the General Plan whose primary purpose is to carry through traffic and provide a network connecting to the state highway system if the Circulation Element has been adopted by the local agency 30 days prior to the filing of a map or an application for building permit.

#### **Section 16.78.030 Public Hearing To Establish an Area of Benefit.**

**A.** The City Council shall, by resolution (“Initial Resolution”), set a public hearing at any time to determine whether an area of benefit is to be established, to designate the boundaries of an area of benefit, to identify the major thoroughfare(s) and/or bridge(s) within the area of benefit that are to be constructed, to determine the costs of construction, whether actual or estimated, and to establish the method for allocation of costs to the area of benefit and apportionment of a fee to be collected from owners of real property within the area of benefit. The area of benefit may include land or improvements in addition to the land or improvements which are the subject of any map or building permit application to be considered at the hearing.

**B.** The City Clerk shall notice the public hearing pursuant to Section 65091 of the California Government Code. The notice shall contain the information required by Section 65094 of the California Government Code and shall set forth the preliminary information related to the boundaries of the area of benefit, identifying the major thoroughfare(s) and/or bridge(s) to be constructed and the estimated cost of each, and set forth the proposed method of apportioning the fee among property owners. The notice shall describe the proposed protest procedure.

#### **Section 16.78.040 Public Hearing-Protest**

**A.** At the public hearing the City Council shall consider the proposed boundary map that outlines the area to be included within the area of benefit, designates those bridge(s) and/or major thoroughfare(s) to be constructed, the cost estimate with regard to each improvement, and the method for apportioning fees within the area of benefit.

**B.** At the public hearing, the City Council shall consider testimony from interested persons, written protests and all relevant evidence submitted. All protests are to be in writing and may be filed with the City Clerk in accordance with the Notice described in Subsection D above at any time prior to the close of the public hearing. Each protest must be filed by a person or entity owning property within the boundaries of the proposed area of benefit and describe the property with sufficient specificity that the parcel may be identified. If the person or entity filing the protest is not shown on the last equalized assessment roll as the owner of the parcel, the protest must contain or be accompanied by documentary evidence establishing ownership. A protest may be withdrawn in writing at any time prior to the conclusion of the public hearing.

**C.** If written protests are filed with the City Clerk from persons or entities owning more than fifty (50) percent of the land area to be included within the proposed area of benefit and, by the conclusion of the public hearing, a sufficient number of the protests have not been withdrawn so as to reduce the land whose owners are protesting to less than fifty (50) percent, then all proceedings with regard to the area of benefit shall be abandoned and the City Council shall not, for one year from the date of the hearing, commence or carry on any proceeding for the same improvements or area of benefit under the provisions of this Section. If any majority protest is directed against only a portion of the designated improvement, then all further proceeding under the provisions of this section to construct that portion of the designated improvement so protested against shall be barred for a period of one year, but the City Council shall not be barred from commencing new proceedings not including any part of the designated improvements so protested against. The City Council may, within a one-year period following a majority protest, commence new proceedings for the construction of the portion of the designated improvements so protested against, if it finds by the affirmative vote of four-fifths of its members, that the owners of more than one-half of the property to be benefited are in favor of going forward with such portion of the designated improvements.

#### **Section 16.78.050 Establishment of Area of Benefit and the Fee.**

**A.** The City Council, by resolution ("Final Resolution"), within a reasonable time after the close of the public hearing, may establish the area of benefit and the fee. The Final Resolution shall set forth the boundaries of the area of benefit, specify the designated improvements to be constructed, the cost, actual or estimated, for each of the designated improvements, and establish the fee schedule by which the cost is to be apportioned among the parcels comprising the area of benefit, all as established at the hearing. The decision of the City Council represented by the Final Resolution shall be final. A certified copy of the Final Resolution shall be recorded in the Office of the Recorder of the County of Riverside.

**B.** The apportioned fees shall be applicable to all property within the area of benefit and shall be payable as a condition of approval of a final map or as a condition of approving a building permit for the property or portions of the property.

**C.** The following limitations apply to the apportioned fees and area of benefit:

1. The method of fee apportionment, in the case of major thoroughfares, shall not provide for higher fees on land which abuts the proposed improvement except where the abutting property is provided direct usable access to the major thoroughfare;

2. If the area of benefit includes lands not subject to the payment of fees, the City Council shall make provision for payment of the fees that would otherwise be

chargeable to the lands from other sources. The designation of the alternate funding need not be addressed in the Final Resolution establishing the area of benefit;

3. Payment of fees shall not be required unless the designated major thoroughfare(s) are in addition to, or a reconstruction of any existing major thoroughfares serving the area of benefit at the time of the adoption of the boundaries for the area of benefit; and

4. Payment of fees shall not be required unless the designated bridge is an original bridge serving the area of benefit or an addition to any existing bridge facility serving the area of benefit at the time of the adoption of the boundaries of the area of benefit. Fees imposed by this Section shall not be expended to reimburse the cost of existing bridge construction, unless these costs are incurred in connection with the construction of an addition to an existing bridge for which fees may be required.

**Section 16.78.060 Payment of Fees.**

The fee applicable to the areas of benefit shall be paid as follows:

A. Fees shall be paid to the Finance Director of the City prior to the recordation of a final map subdivision or parcel map or the issuance of a building permit, as determined by the Final Resolution. [If the recordation of a final parcel map is waived, the fee shall be paid as a condition of the waiver prior to recordation of a certificate of compliance evidencing the waiver of the final parcel map.] The fees paid shall be based on the fee schedule in effect on date of payment.

B. For any parcel or lot created prior to the adoption of the Final Resolution, the fees shall be paid to the Finance Director as described in the Final Resolution.

C. All fees collected shall be deposited in a separate account designated for each area of benefit as provided in Subsection H hereof. Any fees once collected shall not be returned, except as reimbursement for the construction of designated improvements pursuant to an agreement with the City.

D. Nothing in this section is intended to relieve a sub-divider or applicant for a building permit from the requirements imposed under other provisions of this Chapter or other City ordinances to dedicate and improve roads or bridges as a condition of approval of a tentative map or building permit.

E. Notwithstanding the provisions of 1 through 4 above, payment of fees shall not be required for the following:

1. Such additions, alterations, enlargements or erections of additional structures on the same lot or parcel of land as provided in the Final Resolution;

2. Such accessory buildings and structures designated in the Final Resolution, which may include, but not be limited to private garages, children's playhouses, radio and television receiving antennas, windmills, silos, tank houses, shops or barns, or buildings that are accessory to one-family or two-family dwellings;

3. Residential, commercial, industrial or other development exempted from the fee pursuant to the Final Resolution;

4. Outdoor advertising structures; and
5. Wells.

**Section 16.78.070 Use of funds.**

A. Fees shall be deposited by the Finance Director in a designated bridge or major thoroughfare fund. A separate fund shall be established for each designated bridge or major thoroughfare project; provided, however, that if the area of benefit is one in which more than one bridge or major thoroughfare is required to be constructed, a fund may be established covering all of the bridge or major thoroughfare projects in the area of benefit. Moneys in such fund shall be expended solely for the construction or reimbursement for construction of the improvement serving the area to be benefited and from which the fees comprising the fund were collected, or to reimburse the City for the cost of constructing the improvement.

B. The City may advance money from its general fund or road fund to pay the cost of constructing the designated bridge or major thoroughfare(s) and may reimburse the general fund or road fund for such advances from the bridge or major thoroughfare funds established pursuant to this Section.

C. The City may incur interest bearing indebtedness as provided in Government Code Section 66484 for the construction of a designated bridge or a major thoroughfare planned pursuant to this Section; provided, however that the sole security for repayment of such indebtedness shall be money in the specific funds established for that designated bridge or major thoroughfares.

D. The City may reimburse a developer for construction of facilities within the area of benefit pursuant to an agreement with the City and as described in the proceedings and Final Resolution.

**Section 16.78.080 Amendments to the Fee and Area of Benefit.**

The Final Resolution may be amended from time to time by the City Council to reflect modifications in either the facilities to be constructed or the area to be included within the area of benefit due to alterations in land use and to reflect adjustments in the fee schedule necessitated by any amendment or increases in construction costs. The amendments shall be adopted by following the same procedure required to establish an area of benefit; provided, however, that to the extent the resolution only increases the proposed fee related to the same facilities within the same area of benefit and said fee is not higher than the maximum fee adopted by the Final Resolution, the City Council may increase the fee by resolution without a public hearing."

**Section 3.** CEQA. Adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) by virtue of Public Resources Code § 21080(b)(9) and CEQA Guideline 15378(b)(4), as the creation of a government funding mechanism which does not involve any commitment to any specific project is not a "project." The individual projects to be funded by the fees and the individual development projects subject to the fees shall be subject to the appropriate environmental review under CEQA.

**Section 4.** Effective Date. This Ordinance shall take effect 30 days after its adoption.

**Section 5.** Severability. . If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or

applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

**Section 6.** Certification. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published as required by law.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Lake Elsinore, California, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Steve Manos, Mayor

**Attest:**

\_\_\_\_\_  
Candice Alvarez, MMC  
City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF RIVERSIDE    ) ss.  
CITY OF LAKE ELSINORE    )

I, Candice Alvarez, MMC, City Clerk of the City of Lake Elsinore, California, do hereby certify that Ordinance No. 2019 - \_\_\_\_\_ was introduced at the Regular meeting of the City Council of November 12, 2019, and adopted by the City Council of the City of Lake Elsinore, California, at the Regular meeting of \_\_\_\_\_, 2019 and that the same was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Candice Alvarez, MMC  
City Clerk