ORDINANCE NO. __________

AN ORDINANCE OF THE YOLO COUNTY BOARD OF SUPERVISORS AMENDING TITLE 3, CHAPTER 14 OF THE YOLO COUNTY CODE (COUNTY FACILITIES AUTHORIZATION AND FEE)

The Board of Supervisors of the County of Yolo, hereby ordains as follows:

SECTION 1. PURPOSE

The purpose of this Ordinance is to amend Title 3 Chapter 14 of the Yolo County Code of Ordinances to update and streamline the County Code's provisions regarding the County's Facilities and Services Fees.

SECTION 2. AMENDMENTS TO TITLE 3, CHAPTER 14 OF THE COUNTY CODE

Title 3, Chapter 14 of the Yolo County Code of Ordinances is hereby amended as reflected in Attachment 1 to this Ordinance.

SECTION 3. SEVERABILITY

If any section, sub-section, sentence, clause, or phrase of this Ordinance is held by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance, and each section, sub-section, sentence, clause, and phrase hereof, irrespective of the fact that one or more sections, sub-sections, sentences, clauses, and phrases be declared invalid.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect and be in force 30 days after passage. Prior to expiration of fifteen (15) days after its passage of this Ordinance, it shall be published by title and summary only in the Davis Enterprise or other newspaper of general circulation together with the names of members of the Board of Supervisors voting for and against the same.

I HEREBY CERTIFY that the foregoing Ordinance was introduced before the Board of Supervisors of the County of Yolo and, at a further public hearing, said Board adopted this Ordinance on the 12th day of January, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

____
Gary Sandy, Chair
Yolo County Board of Supervisors

ATTEST: Julie Dachtler, Senior Deputy Clerk
Board of Supervisors

By___________________________
Senior Deputy (Seal)

APPROVED AS TO FORM:
Philip J. Pogledich, County Counsel

By___________________________
Eric May, Senior Deputy

ATTACHMENT 1

Chapter 14
COUNTY FACILITIES AUTHORIZATION AND FEE

Sections:

Sec. 3-14.01. Findings.

(a) The California Mitigation Fee Act, Section 66000 et seq. of the Government Code, establishes a process that allows public agencies to implement a fee program for new development to address government facility needs and associated costs directly related to the population growth associated with development.

(b) County facility needs grow commensurate with the growth in population. New residents and employees are likely to require as much service as the County provides to existing residents and employees. Increased demand on services increases space needs.

(c) All or a portion of the costs associated with facilities needs may be recovered through the establishment, increase, or imposition of development fees.

(d) The California Mitigation Fee Act requires that all public agencies satisfy certain requirements when establishing, increasing, or imposing a fee as a condition of approval for a development project.

(e) This chapter properly limits use of all fees collected to public facilities and improvements attributable to new development, and further limits use of fees to specific categories of facilities and improvements until and unless subsequent evidence justifies reallocation.

(f) Fees collected under this chapter will fund facilities for County-wide services. Development within incorporated cities will cause more than ninety (90%) percent of the demand for new facilities in the identified categories. Substantially greater development outside the existing cities would cause unacceptable loss of productive agricultural land.

(g) The cities do not and cannot provide the identified facilities and the related services, while the County is required to do so.

(h) Development within the cities should pay a fair share toward the new facilities which it requires. Otherwise, the costs of those facilities will be disproportionately and unfairly borne by other County taxpayers, or will unfairly reduce the level of service provided to present County residents.

(i) In order to recover its costs resulting from development within cities, the County must exercise authority over that development, solely to the extent of requiring payment of a fee.

(j) Residential projects and commercial improvements bring additional residents and employees into the County. Those residents and employees require social, health, probation, traffic, parks and open space, sheriff, criminal justice, County administrative services, and libraries. The purpose of the fees required by this chapter is to pay for costs of additional facilities used to provide Countywide public protection, health and human services, libraries, sheriff's patrol and investigation services, traffic, parks and open space, County administration, information technology, planning, and public works, and facility planning. The fees received pursuant to this chapter are to be used to assess the need for, plan, design, construct, develop, lease and acquire facilities for such services.

Sec. 3-14.02. Definitions.

For the purpose of this chapter, the words set out in this section shall have the following meanings:

(a) "Accessory Dwelling Unit" or "ADU" shall mean a small permanent Dwelling Unit that may be established in addition to the primary dwelling on a parcel zoned for residential use. ADUs may be attached or detached from the primary dwelling and comply with Government Code 65852.2 requirements.

(b) "Agricultural Building" shall mean a structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall it be a place used by the public.

(c) "Category" or "categories" shall mean one or more of the following: probation youth; probation adult; social services; health services; libraries; sheriff administration & detention; sheriff law enforcement; district attorney and public defender; general administration; facility planning; and interim restricted cash.

(d) "Commercial" shall mean sale or rental of merchandise (other than automobiles, vehicles, trucks, trailers and related implements for agricultural use), food or beverages for personal or household consumption, services rendered in connection with such sales or rentals, and all uses not otherwise classified under this chapter which have Standard Industrial Classification codes with employment densities similar to those for uses listed in this section.

(e) "Commercial improvement" shall mean new construction or alteration of, or an addition to, a structure which occurs after the effective date of Yolo County Ordinance No. 1119 and which results in a net increase of five hundred (500) or more gross square feet (taking into account square footage which is lost, including demolition under Section 3-142.04(d) of enclosed space suitable and intended for office/service, retail, wholesale or manufacturing use.

(f) "County Facilities Fee" shall mean the fee imposed under this Chapter.

(g) "Dwelling" shall mean a building that contains one or more dwelling units used, intended or designed to be used, rented, leased, let, or hired out to be occupied for living purposes.

(h) "Dwelling Unit" shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(i) "Impacting development" shall mean any commercial improvement or residential project, except to the extent that the improvement or project is constructed pursuant to a building permit issued upon an application filed before August 1, 1991 and determined or deemed to be complete before September 1, 1991.

(j) "Industrial" shall mean (1) a use which mechanically or chemically transforms materials or substances into, or fabricates, new products; (2) agriculture, forestry or fishing; (3) mining; (4) construction; (5) transportation; (6) public utility use; and (7) all uses not otherwise classified under the ordinance codified in this chapter which have Standard Industrial classification codes (These classification codes are found at: https://www.osha.gov/pls/imis/sic_manual.html) with employment densities similar to those for the uses listed in this section.

(k) "Junior Accessory Dwelling Unit" or "JADUs" shall mean a very small Dwelling Unit created out of a bedroom within an existing single family home. JADUs must comply with Government Code Section 65852.22.

(l) "Office" shall mean use or occupancy by: (1) persons or entities performing or providing finance, insurance, real estate, professional, technical, health, design, repair, personal or other services, other than retail uses; (2) hotel use; (3) entertainment and public assembly uses; and (4) all uses not otherwise classified under this chapter which have Standard Industrial Classification codes with employment densities similar to those for uses listed in this section.

(m) "Residential project" shall mean construction of one or more dwelling units (including mobile homes) and alteration or addition of an existing unit or units which creates one or more net additional units.

(n) "Security contract" shall mean a contract in recordable form which constitutes a lien for payment of the fee due under this chapter, against the present and future owners of the property in question, securing payment of the fee in full upon the first dwelling or improvements in the project receiving final inspection or a certificate of occupancy (or at such later time as this chapter specifically provides in a particular case).

(o) "Warehouse" shall mean: (1) storage or transfer of goods primarily to or for industrial, Commercial, institutional, farm, construction or professional business users; (2) storage or transfer of automobile, trucks, trailers and vehicles and related implements for agricultural use; and (3) all uses not otherwise classified under this chapter which have

Standard Industrial Classification costs with employment densities similar to those for uses listed in this section.

(§ 1, Ord. 1119, eff. May 30, 1991, as amended by §§ 2-5, Ord. 1150, eff. December 26,1992, §§ 2, 4-6, Ord. 1179, eff. June 17, 1995; and as amended by § 3, Ord. 1301, eff. June 19, 2003)

Sec. 3-14.03. Authorization required.

(a) After August 1, 1991, no person shall construct, nor direct or contract for construction of, any impacting development within the county without first obtaining a county facilities and services authorization after payment of the fee specified in Section 3-14.04(b).

(b) No person shall cause the use of an existing structure to be changed without first obtaining a county facilities and services authorization after payment of the fee specified in Section 3-14.04(g).

(c) County facilities and services authorizations shall be issued as provided in Section 3-14.04, and construction and development shall not be otherwise regulated under this chapter. (§ 1, Ord. 1119, eff. May 30, 1991, as amended by § 6, Ord. 1150, eff. December 26, 1992)

Sec. 3-14.04. Terms of payment to obtain authorization.

(a) *Conditions of issuance.* The County Department of Community Services, or a city so authorized pursuant to Section 3-14.05(d), shall issue a county facilities and services authorization, upon: (1) payment of a fee in the amount set forth in subsection (b)or (h), whichever applies; (2) a determination that the impacting development is exempt from the fee; or (3) agreement to subsequently pay the fee set forth in subsection (b)or (h)and execution of a security contract. Except where a security contract provides otherwise, fees due shall be paid no later than the date of issuance of a building permit to construct the impacting development in question or upon occupancy where no building permit is required.

(b) *Fee amounts.* Except to the extent reduced by an in-lieu contribution approved pursuant to subsection (d), fees under this section shall be payable in the amounts established by the Board of Supervisors and set forth in the County's Master Fee Resolution. The amount payable shall be reduced by the amount of any fee charged to the developer by any other jurisdiction to provide funding for the same county facilities. The Board of Supervisors may, without a further comprehensive cost and fee study, adjust by resolution the fee amounts once annually based on the percentage increase in the Engineering News Record Construction Cost Index or a similar index which measures typical construction costs for facilities generally similar to those to be built by the county. (§ 4, Ord. 1349, eff. May 25, 2006.)

(c) *Appeal.*

A person or entity who proposes to construct an impacting development and has received a preliminary estimate of the fee due under this chapter, or received certification by a city pursuant to Section 3-14.05(b), may file a written appeal requesting a fee reduction. The appeal shall be filed with the County Department of Community Services within thirty (30) days after filing the building permit application. The fee reduction may be requested on the grounds that: (A) the development has been inappropriately classified in determining the fee amount; or (B) the development's impact on population, employment or use of facilities will, as a result of exceptional circumstances not taken into account in adopting the fee, be less than the impact projected for the use category in which the impacting development falls. The burden of proof in establishing these grounds shall be on the person filing the request.

1. The appeal shall contain such information as the Department of Community Services may reasonably require.
2. The appeal shall be presented to and considered by a subcommittee consisting of the Chief Building Official or his designee and two (2) representatives of the Department of Community Services Director. Oral and written evidence may be presented by any party at such hearing. The hearing may be continued from time to time as is deemed necessary. The Subcommittee shall issue a written decision on the appeal no later than fifteen (15) days after the hearing is closed. The Subcommittee decision shall be a final administrative decision, unless appealed to the Board of Supervisors.
3. The Subcommittee's decision may be appealed to the Board of Supervisors by filing, not later than fifteen (15) days after the Subcommittee issues its written decision, a written appeal with the Clerk of the Board. The Board may decide such appeals based on the material which formed the record before the Subcommittee, or may consider additional evidence presented at a hearing before the Board. The Board shall issue a written decision on the appeal no later than thirty (30) days after it is filed, or not less than thirty (30) days after completion of a hearing, whichever is later. The Board's written decision shall be a final administrative decision for purposes of exhaustion of administrative remedies.
4. Any appeal to the Board of Supervisors shall be accompanied by a fee in the amount which is necessary to recover the costs of processing the appeal. Such fee shall be established by resolution of the Board of Supervisors.
5. *Demolition or destruction offset.* Where a building permit to construct an impacting development is issued within two (2) years after demolition on the same lot, or where new construction replaces a structure on the same lot which was damaged or destroyed by fire, earthquake or other causes similarly beyond the owner's control, the amount of new construction taken into account under this chapter shall be reduced by the number of dwelling units (in the case of construction of a residential project) or square feet (in the case of construction of commercial improvements) which were demolished or destroyed.

6. *In-lieu contribution.* The County may authorize, in connection with approval of a subdivision map or any other development approval subject to a required public hearing before any decision-making body of the County, an impacting development within an unincorporated area of the County to substitute completed facilities or another contribution of at least equivalent value to the foregone fee for all or part of the fees required under this chapter. The facilities or other contribution must reduce the need for new County facilities in one or more of the categories. Where the facilities or other contribution exceed in value the fee amount in the category or categories in which a benefit is provided, the County may (but shall not be required to) credit the excess value against fees in other categories and may further provide for a compensating allocation to the other categories of future fee receipts from the category in which a benefit is provided. (§ 1, Ord. 1119, eff. May 30, 1991, as amended by §§ 2-5, Ord. 1150, eff. December 26,1992, §§ 2, 4-6, Ord. 1179, eff. June 17, 1995; and § 4, Ord. 1301, eff. June 19, 2003)
7. *Information required.* Where the County is to issue an authorization, the person liable for the fee shall submit to the County Department of Community Services such information as the Department may require to calculate the amount due, or, where a city certifies square footage and use, or number of dwelling units, pursuant to Section 3-14.05(b), the city's certification and any further information necessary to calculate the fee.
8. *Change of use fee.* The fee where a change of use of an existing structure has occurred shall be determined by subtracting the fee that would be charged for the previous use under subsection (b), above from the fee that would be charged for the new use under that subsection. If the result is zero or a negative number, no fee shall be charged. No change of use shall be considered to have occurred for a structure to which a Business Park fee was previously applied if the new and old uses are both uses described in Section 3-14.02, "Business park," of this chapter.
9. *Affordable housing fee waiver.* Notwithstanding the remaining provisions of this chapter, no County Facilities Fee shall be charged for those residential dwelling units within a residential project which satisfy the following criteria:
   i. The units are affordable to lower income households defined as follows: In the case of rental units the rent shall not exceed thirty (30%) percent of eighty (80%) percent. of area median income. In the case of for sale units, the units will be sold at an affordable price to persons whose total household income does not exceed eighty (80%) percent of area median income;
   ii. The continued affordability of the rental units for the longest feasible time, but in no event less than thirty (30) years, shall be assured by some means that is satisfactory to the Director of Community Development. for sale units without resale controls ensuring long term affordability,

recapture of the waived fee upon sale of the unit shall be assured by some means satisfactory to the Director; and

iii. Where the units are located in an incorporated area, the City has provided an incentive for the construction of the affordable units by a waiver of City capital facilities fees.

10. The waiver of County facilities fees provided in subsection (9) above, shall be considered as a concession or incentive described in Section 65915(h) of the Government Code.

11. *Exemption for certain agricultural structures.* Agricultural structures as defined by the Uniform Building Code shall be exempt from the fees provided in this chapter. (§ 1, Ord. 1119, eff. May 30, 199 1, as amended by §§ 1 and 2 of Ord. 1132, eff. December 26, 1991, §§ 7-9, Ord. 1150, eff. December 26, 1992, § 5, Ord. 1164, eff. November 4, 1993, and §§ 7-9, 11, Ord. 1179, eff. June 17, 1995)

Sec. 3-14.05. City election to administer.

(a) *City may condition approval.* Any incorporated city within the County may elect to condition any approval of an impacting development, including without limitation issuance of a building permit, on obtaining a County facilities and services authorization.

(b) *City may certify.* Irrespective of whether it conditions approval pursuant to subsection (a)of this section, a city may determine the use category and the number of gross square feet of a commercial improvement, or number of dwelling units in a residential project, and provide certification of its determination to the County, or to the applicant for transmission to the County, for the purpose of calculating the County facilities and services fee.

(c) *City may collect.* Any city which conditions approval pursuant to subsection (a)of this section may collect and pay over to the County the county facilities and services fee, in the amount specified in Section 3-14.04, for an impacting development within that city. No impacting development which pays in full to such a city, for the account of the County, the county facilities and services fee, shall be liable for payment of the fee to the County.

(d) *City may issue authorization.* Any city which collects the county facilities and services fee pursuant to subsection (c) of this section and pays said fee to the County Tax Collector shall issue the corresponding county facilities and services authorization.

(e) *Administrative fee to City.* Any city which collects the county facilities and services fee pursuant to subsection (c)of this section shall be entitled to retain the administration fee specified pursuant to Section 3-14.07. Any city which provides to applicants, or to the County, certification of the city's calculation of the use category and number of gross square feet of a commercial improvement, or number of dwelling units, pursuant to subsection (b)of this section, shall be entitled to receive a portion of the administration fee specified pursuant to Section 3-14.07(a).

(f) *County to defend.* Upon reasonable notice by a city after notice of any claim or challenge, the County will defend, at its expense and with counsel of its choice, indemnify and hold harmless any city acting pursuant to this section with respect to any claim or challenge concerning the city's actions hereunder, except to the extent of the city's own willful misconduct or gross negligence.

(g) *Liability for deficiency.* No city which collects the County facilities and services fee pursuant to subsection (c) of this section, or provides certification pursuant to subsection (b) of this section, shall be liable to the County for any deficiency in the amount of the fee collected, so long as the city determines the square footage of commercial improvements and the number of dwelling units in residential projects consistently with its determination of other fees payable by the applicant to the city. (§ 1, Ord. 1119, eff. May 30, 1991)

Sec. 3-14.06. Use of fees.

(a) *Fee allocation.* The County Auditor/Controller shall allocate all fees received into accounts corresponding to the categories. The amount so allocated shall be the fee amount attributable to the respective category established by Board resolution. The County Auditor/Controller shall maintain such accounts from year to year.

(b) *Use limitation.* Amounts in each of the accounts shall be expended exclusively to determine the necessity of, plan, design, carry to completion, acquire or lease expanded or additional facilities of the type corresponding to that fund, except as provided in subsections (1) and (2) below. In no event shall any fee collected pursuant to this chapter (other than an administration or processing fee) be expended for any purpose other than expanded or additional facilities for one or more categories.

(c) Funds may be advanced from one account to another where the evidence is for facilities which are proceeding sooner than those facilities to be funded by the account from which the advance is furnished, and where the advance will be repaid from future fee revenue allocated to the account receiving the advance.

(d) Funds may be transferred between accounts where the transferred amount is used for a facility for which the actual cost attributable to new development as shown by subsequent evidence exceeds the corresponding amount estimated by the Report, provided that this sub-section provides no authority to increase in any respect the aggregate fee amount payable by any impacting development.

(e) *Government Code requirements.* The County Auditor/Controller shall deposit, invest and account for all fees received under this ordinance pursuant to California Government Code Section 66006 (and any successor provision). All fees received under this chapter and not expended or committed within five (5) years after receipt shall be refunded pursuant to California Government Code Section 66001 (and any successor provision), unless the County otherwise complies with the requirements of that section (or a successor provision).

(f) *Reference to report.* A determination as to whether a facility falls within any category shall be made with reference to the most current development impact fee study and if necessary, its Background Technical Information. (§ 1, Ord. 1119, eff. May 30, 1991 and as amended by § 5, Ord. 1301, eff. June 19, 2003)

Sec. 3-14.07. Administration.

(a) *Fees.* The County Auditor/Controller shall determine the estimated costs of administration of this chapter and may recommend to the Board of Supervisors fees to recover those costs. Initially, costs shall be estimated and the Board may establish fees separately, by resolution, for at least the following two (2) types of administration:

(1) Administration through a city which collects and pays over the county services and facilities fees pursuant to Section 3-14.05(c), or certifies use and square footage, or number of units, pursuant to Section 3-14.05(b). In the case of a city which certifies use and square footage or number of units, the component of the administration fee attributable to such certification shall be identified.

(2) Administration by the County, including any additional costs resulting from implementing a county review process to identify impacting developments and carry out this chapter, or from analysis by the County, not otherwise required, of the number of dwelling units, use or square footage of a development, in order to determine the fee payable.

(b) The Board of Supervisors may, by resolution, modify or terminate any fee set under this section and may establish additional fees or charges related to administration of this chapter.

(c) *Additional rules and regulations.* The Board of Supervisors may adopt by resolution rules, regulations, guidelines and procedures for administration of this chapter. The County Community Development Agency shall provide for availability of preliminary estimates of fees payable by impacting developments. The County Community Development Agency, County Assessor and County Auditor/Controller may each adopt such further rules or regulations not in conflict with any action of the Board of Supervisors, as may be appropriate to carry out this chapter. (§ 1, Ord. 1119, eff. May 30, 1991)

Sec. 3-14.08. Enforcement.

(a) *Misdemeanor.* Violation of this chapter shall be a misdemeanor. The District Attorney may institute criminal proceedings hereunder. Any violator, upon conviction, shall be fined not more than One Thousand and no/100ths ($1,000.00) Dollars, imprisoned for a period not exceeding six (6) months or both fined and imprisoned.

(b) *Civil proceedings.* The County Counsel may institute civil proceedings to enforce this chapter, including without limitation actions for injunction and civil penalties.

Construction without the authorization required by this chapter may be suspended by a court of competent jurisdiction. Violation of this chapter interferes with provision of public services, and shall be a public nuisance.

(c) *Civil penalties.* Any violator of this chapter shall be liable, in addition to payment of the amount of any fees due, for civil penalties not to exceed: (1) Five Hundred and no/100ths ($500.00) Dollars for each day during which construction proceeds in violation of this chapter, plus (2) fifteen (15%) percent of the amount of any fees not paid when due.

(d) *Lien.* In the event of failure of an impacting development to pay in full a fee payable pursuant to this chapter, the County may place and record a lien upon the property at which the impacting development is constructed in the amount of the unpaid fee. The Board of Supervisors shall adopt, pursuant to Section 3-14.07(b) rules concerning imposition of such liens, which shall provide for a timely public hearing concerning imposition of the lien.

(e) *Costs of securing compliance.* Any person or entity not in compliance with this chapter shall be liable, in addition to other amounts provided for in this section, for attorney's fees, or the reasonable costs of staff legal services incurred by the County, and all other reasonable costs of securing compliance, including collection of fees.

(f) *Interest.* Interest shall accrue on all fees not paid when due pursuant to this chapter at the rate prescribed by law for interest on judgments, from the date when payment was due until the date payment is received in full. (§ 1, Ord. 1119, eff. May 30, 1991)