

**ORDINANCE NO. 378**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN ADDING CHAPTER 16.22 TO THE ARVIN MUNICIPAL CODE REGARDING FEES FOR PARK DEVELOPMENT AND IMPROVEMENT**

**THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION ONE:** The Arvin Municipal Code is hereby amended to add Chapter 16.22 to read as follows:

**Chapter 16.22 FEE FOR PARK DEVELOPMENT AND IMPROVEMENT**

**Sections:**

- 16.22.010 Purpose.
- 16.22.020 Definitions.
- 16.22.030 Implementation.
- 16.22.040 Collection of fees.
- 16.22.050 Setting of fees.
- 16.22.060 Adjustment of fees.
- 16.22.065 Park development fee credit for multiple-service medical and recovery care facility.
- 16.22.070 Exemptions.

16.22.010 Purpose.

The purpose of this chapter is to promote the public interest, and necessity for public convenience, health, safety and welfare by establishing and imposing a fee as a method for financing the development, improvement, and/or enhancement of public parks.

16.22.020 Definitions.

A. Development means any activity requiring approval, or permit which physically disturbs or alters a site, including grading of or construction on any parcel of real property.

B. Enhancement means any development and/or improvement to upgrade, improve or rehabilitate an existing or proposed public park to better serve the public.

C. Improvement means any street work or utilities to be installed on the land to be used for public or private streets, highways and easements, and which are necessary for the general use of the lot owners in a subdivision and local neighborhood traffic and drainage needs.

D. Dwelling unit means any building or portion thereof, which contains one kitchen, and is designed and/or used to house not more than one family, including necessary employees of such family.

E. Multiple-service medical and recovery care facility means a facility that includes skilled nursing beds, assisted living and independent living apartments, described as follows:

1. Skilled nursing is commonly known as nursing homes providing around the clock nursing care staffed by licensed administrators, nurses, nurse assistants, registered dietitians, activity directors and staff development and education. Skilled nursing facilities generally offer care one step below a general acute hospital.

2. Assisted living provides a level of personal care primarily to serve the ambulatory, but frail client in a residential living environment where residents receive individualized assistance, supportive services and health care, such as requiring assistance in one or more activities such as providing medication, housework, meal preparation, eating, shopping, dressing and bathing. The level of care is a median between nursing home and independent (congregate) living.

3. Independent living units, also known as congregate care, are a self-contained apartment which includes a kitchen, and has supportive services such as meal service, housekeeping, transportation, nursing, medical, and social and recreational activities which are available for residents. An independent living unit is defined as a residential dwelling unit which is subject to this chapter.

16.22.030 Implementation.

A. The city will collect a park development, improvement, and enhancement fee for each new dwelling unit within city boundaries, except for those dwelling units exempted under Section 16.22.070.

B. The city will hold said fees collected by it in a separate trust account, including accrued interest, for payment of park development, improvement and/or enhancement for public parks and recreational facilities.

C. Said fees will be imposed and collected at the date of final inspection or the date the certificate of occupancy is issued, whichever occurs first for new residential construction, on a per unit basis, according to the fee schedule set by the city council. Fees may be paid prior to date of final inspection or the date of certificate of occupancy if a developer so desires.

D. Payment of said fees will satisfy city conditions of approval placed on projects with regard to park development, improvement and/or enhancement which have not previously been satisfied.

16.22.040 Collection of fees.

A. The park development, improvement and enhancement fee shall be paid in full, in cash, at the date of final inspection, or the date the certificate of occupancy is issued, whichever occurs first. Said fee may be paid at time of building permit issuance if a developer chooses. Said fee may be paid by cash, pledged certificate of deposit, irrevocable letter of credit, or performance/surety bond if developer wishes to pay said fee prior to recordation of a final subdivision map tract or parcel map. All but cash shall be made payable upon demand by the City Manager or City Manager's designee.

B. The city council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in said account five or more years after deposit of the fee to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. These findings need only

be made for moneys in possession of the city and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date.

C. Except as provided in Section 16.22.040D, the city shall refund to the current record owner or owners of lots or units of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this chapter. The city may refund the unexpended or uncommitted revenues by direct payment, by providing at temporary suspension of fees, or by any other means consistent with the intent of California Government Code Section 66001. The determination by the city council of the means by which those revenues are to be refunded shall be a legislative act.

D. If the administrative costs of refunding unexpended or uncommitted revenues pursuant to this chapter exceed the amount to be refunded, the city council, after a public hearing, notice of which has been published pursuant to California Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be subject to this chapter and which serves the project on which the fee was originally imposed.

16.22.050 Setting of fees.

The city council shall, by resolution, establish the fee required under this chapter, on a per unit basis.

16.22.060 Adjustment of fees.

Each fiscal year, the City Manager or City Manager's designee shall submit a proposed fee schedule regarding the fee amount to be collected for each new dwelling unit. The fee shall be adjusted annually by the annual Construction Cost Index. The Construction Cost Index shall mean the ENR Annual Construction Cost Index (Los Angeles) as published by Engineering News Record, McGraw-Hill Cos. Also, the fee schedule shall be further adjusted to reflect all costs incurred for park development, improvement, or enhancement. The fee shall be adopted by resolution of the city council following a noticed public hearing.

16.22.065 Park development fee credit for multiple-service medical and recovery care facility.

A. Only one of the two types of credit allowed under this section shall be given. An applicant who seeks credit under this section shall be required to submit a letter making such request to the planning director as part of an application for a zone change to a PUD (Planned Unit Development) zone. The letter must specifically state which type of credit is being requested; enumerate how the facility meets each of the criteria listed in this section; include a copy of the floor plan(s); a site plan identifying the recreational and open space facilities, including acreage and square footage of such facilities; and other reasonable documentation the planning director, or his designee, may request to make a determination whether the request meets the requirements of this section.

B. Each residential independent living unit as part of a multiple-service medical and recovery care facility which satisfies the following criteria shall pay fifty percent of the amount of the adopted park development fee:

1. Demonstrate that the facility is a multiple-service medical and recovery development that includes skilled nursing, assisted living and independent living units, as defined in Section 16.22.020(E); and

2. The applicant or developer shall enter into an agreement with the city which clearly identifies the amenities which shall be developed and which meet the on-site park, open space, garden or other specially dedicated outdoor area requirements of subsection (B)(5) of this section. Such agreement shall require that the amenities be completed and approved by the development services director prior to issuance of a certificate of occupancy for the multiple-service medical and recovery care facility; and

3. The facility provides for continued maintenance of and preservation of the open space and/or recreation facilities by recorded written agreement, covenants, restrictions or other instrument approved by the city attorney. The recorded instrument shall run with the land and may not be amended without prior written approval of the city; and

4. The facility must have a minimum of ninety independent living units, and the number of independent living units shall not to exceed thirty percent of the total number of units and/or beds of the multiple-service medical and recovery care facility; and

5. The facility shall provide on-site at least one of the following for the independent living unit residents:

a. A minimum of one-half acre of outdoor open space, garden or other specially dedicated outdoor activity area that is usable. Usable area means the outdoor area shall be reasonably adaptable and improved for use as park and recreational purposes taking into consideration such factors as size, shape, topography, geology, access and location of the open space. Areas required by zoning or building ordinances such as yard, setback, landscaping, parking, and drainage or detention basins shall not be used as any part of the open space, gardens or other outdoor activity area proposed to satisfy the requirements of this section,

b. Indoor recreation room for exercise, arts and crafts, and other group activities. Size of room shall have a minimum capacity of forty-five people,

c. Swimming or therapeutic pool,

d. Amphitheater or auditorium,

e. Indoor gym for activities such as basketball, badminton and volleyball,

f. Indoor courts for such activities as racquetball or handball,

g. Running or walking track or trail with specialty surface,

h. Multiple station exercise par course,

i. Golf course,

j. Other comparable facility as approved by the planning commission or city council.

C. Each residential independent living unit as part of a multiple-service medical and recovery care facility which satisfies all of the following criteria shall not be required to pay the adopted park development fee:

1. The facility shall meet the requirements of subsections (B)(1) through (B)(3) of this section, and the applicant or developer shall enter into an agreement with the city which clearly identifies the amenities which shall be developed and which meet the on-site park, open space, garden or other specially dedicated outdoor area requirements of this section. Such agreement shall require that the amenities be completed and approved by the Development Services

Director prior to issuance of a certificate of occupancy for the multiple-service medical and recovery care facility; and

2. The facility must have a minimum of one hundred twenty independent living units, and the number of independent living units shall not to exceed fifty percent of the total number of units and/or beds of the multiple-service medical and recovery care facility; and

3. The facility shall provide indoor recreation rooms for such activities as exercise, arts and crafts, and other group activities for the independent living unit residents. There shall be at least one room with a minimum capacity of forty-five people; and

4. The facility shall provide no less than two acres of outdoor open space, garden or other specially dedicated outdoor activity area that is usable. The outdoor area shall be reasonably adaptable and improved for use as park and recreational purposes taking into consideration such factors as size, shape, topography, geology access and location of the open space. Areas required by zoning or building ordinances such as yard, setback, landscaping, parking and drainage or detention basins shall not be used as any part of the open space, gardens or other outdoor activity area proposed to satisfy the requirements of this section; and one of the amenities listed in Section 16.22.065(B)(5)(c) through (j).

D. At the option of the applicant, the full amount of the fee, which does not include said credit as described in subsections B and C of this section, may be paid at the time of issuance of the building permit for any independent living unit. Subsequent to payment of the fee in full, and if the city council approves a PUD (Planned Unit Development) zone change that includes open space and recreation facilities that meet the requirements of this section, the applicant may submit a written request to the Development Services Director for refund of fifty percent or one hundred percent of the fee paid, subject to the criteria listed in this section, and a refund shall be issued to the applicant or appropriate payee. However, said request must be made within three months of issuance of a certificate of occupancy for the building containing independent living units. If no request is made within such time period, this credit becomes void, and no refund shall be made. The development services director shall have fourteen days to respond to a request.

E. The appeal procedure for this section shall be in accordance with Section 13.08.600 16.22.070 Exemptions.

The provisions of this article shall not apply to the following:

A. Reconstruction, rehabilitation, remodel or replacement of a dwelling unit structure, provided the replacement structure is the same type of unit, does not create additional dwelling units and is substantially the same size as the structure it replaces.

B. Subdivisions or development for which park development, improvement and/or enhancement requirements have previously been satisfied and evidence of such satisfaction, acceptable to the city is submitted. However, subsequent division of such parcels may result in additional fees set forth in this chapter.

C. Condominium conversion projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building when no new dwelling units are added.

D. Commercial retail and office, and industrial subdivisions with no residential development or uses. However, fees shall be required where a residential dwelling unit is constructed in conjunction with commercial or industrial subdivisions.

**SECTION TWO:** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion or the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION THREE:** The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be posted for a period of ten days.

**I HEREBY CERTIFY** that the foregoing Ordinance was passed and adopted by the Arvin City Council at a regular meeting thereof held on the 28<sup>th</sup> day of October, 2008, by the following roll call vote:

AYES: CM Ojeda, CM Stoner, MPT Flores, Mayor Tarver

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

**CITY OF ARVIN**

By:   
\_\_\_\_\_ **TIM TARVER, Mayor**

**ATTEST:**

  
\_\_\_\_\_ **CECILIA VELA, City Clerk**

**APPROVED AS TO FORM:**

By:   
\_\_\_\_\_ **RACHEL H. RICHMAN, City Attorney**  
**BURKE, WILLIAMS & SORENSEN, LLP**