

ORDINANCE BILL NO. 2011-08

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, TO ADD CHAPTER 22.20 TO THE MUNICIPAL CODE CONCERNING THE LOCAL DEVELOPMENT MITIGATION FEE FOR FUNDING THE PRESERVATION OF NATURAL ECOSYSTEMS IN ACCORDANCE WITH THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT CONSERVATION PLAN

WHEREAS, the City Council of the City of Indian Wells, California (the "City") finds that the ecosystems of the City, the Coachella Valley and surrounding mountains located in central Riverside County, and the vegetation communities and sensitive species they support are fragile, irreplaceable resources that are vital to the general welfare of all residents; and

WHEREAS, these vegetation communities and natural areas contain habitat value which contributes to the City's and the region's environmental resources; and

WHEREAS, special protections and conservation goals for these vegetation communities and natural areas have been established to prevent future endangerment of the plant and animal species that are dependent upon them, all as more specifically set out in the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan ("MSHCP"); and

WHEREAS, the MSHCP was adopted by the City Council on November 1, 2007, and the associated Implementing Agreement was executed by the City on November 1, 2007, to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of applicable laws, which could include the National Environmental Policy Act ("NEPA"), the California Environmental Quality Act ("CEQA"), the Federal Endangered Species Act ("FESA"), the California Endangered Species Act ("CESA") and the California Natural Community Conservation Planning Act ("NCCP Act"); and

WHEREAS, in order to further the purposes of the MSHCP, the City previously established a Local Development Mitigation Fee to assist in the maintenance of biological diversity and the natural ecosystem processes that support this diversity; the protection of vegetation communities and natural areas within the City, Coachella Valley and surrounding mountains located in central Riverside County which are known to support threatened, endangered or key sensitive populations of plant and wildlife species; the maintenance of economic development within the City by providing a streamlined regulatory process from which development can proceed in an orderly process; and the protection of the existing character of the City and the region through the implementation of a system of reserves which will provide for permanent open space, community edges and habitat conservation for species covered by the MSHCP; and

WHEREAS, the findings and studies upon which the Local Development Mitigation Fee was originally based, including the estimated acquisition costs for such property, conservation of those properties in perpetuity as required under the MSHCP and the growth projections for new development have now been updated to reflect the current market conditions, as set forth in the Mitigation Fee Nexus Report dated May 16, 2011 that was prepared at the direction of the Coachella Valley Conservation Commission (the "Commission"), a copy of which is on file in the City Clerk's office; and

WHEREAS, pursuant to Article 11, Section 7 of the California Constitution, the City is authorized to enact measures that protect the health, safety and welfare of its citizens; and

WHEREAS, pursuant to the Mitigation Fee Act, Government Code sections 66000 et seq., the City is empowered to impose and modify fees and other exactions to provide funding of public facilities in the form of acquired habitat land preserved as a community amenity, and the public services required for conservation of this land in perpetuity in order to mitigate the effect of new development projects; and

WHEREAS, all environmental impacts associated with the acquisition and conservation of lands were fully and thoroughly analyzed within the Environmental Impact Report/Environmental Impact Statement prepared and certified for the MSHCP, and the City Council made all appropriate environmental findings at the time that the MSHCP and the associated Implementing Agreement were approved on November 1, 2007. Accordingly, and pursuant to Public Resources Code section 21166 and State CEQA Guidelines section 15162, no further environmental analysis is required.

NOW, THEREFORE, the City Council of the City of Indian Wells **DOES ORDAIN AS FOLLOWS:**

SECTION 1. Short Title. This Ordinance shall be known as the "Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan Mitigation Fee Ordinance."

SECTION 2. Findings. The City Council finds and determines as follows:

A. In order to realize the goals and objectives of the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan ("MSHCP") and to mitigate the impacts caused by new development in the City, lands supporting species covered by the MSHCP must be acquired, monitored and managed in order to achieve habitat conservation in perpetuity.

B. The Local Development Mitigation Fee (the "Fee") is necessary in order to supplement the financing of the acquisition of lands supporting species covered by the

MSHCP and related public services, and to pay for new development's fair share of the cost of acquisition and perpetual conservation.

C. The appropriate source of funding for the costs associated with mitigating the impacts of new development to the natural ecosystems and covered species within the City, as identified in the MSHCP, is a fee paid for by residential, commercial and industrial development. The amount of the Fee is determined by the nature and extent of the impacts from the development to the identified natural ecosystems and the relative cost of mitigating such impacts.

D. The Fee does not reflect the entire cost of the lands which need to be acquired and perpetually conserved in order to implement the MSHCP and mitigate the impact caused by new development. Additional revenues will be required from other sources. The City finds that the benefit to each development project is greater than the amount of the Fee to be paid by that project.

E. The use of the Fee is apportioned relative to the type and extent of impacts caused by the development.

F. The costs of funding the proper mitigation for natural ecosystems and covered species identified in the MSHCP which are impacted by new development are apportioned relative to the type and extent of impacts caused by the development.

G. The facts and evidence provided to and considered by the City Council establish that there is a reasonable relationship between the need for acquiring and conserving in perpetuity the natural ecosystems and covered species identified in the MSHCP, and the impacts to such natural ecosystems and species created by the types of development on which the Fee will be imposed; and that there is a reasonable relationship between the Fee's use and the types of development for which the Fee is charged. This reasonable relationship is described in more detail in the Mitigation Fee Nexus Report.

H. The fees collected pursuant to this Ordinance are reasonable and will not exceed the estimated total cost of the acquisition and perpetual conservation of the lands necessary to protect natural ecosystems and covered species, the plan and schedules for which are set forth in the MSHCP. Conservation of the land shall require monitoring and management beyond the life of the MSHCHP permit.

I. The Fee shall be used to finance the acquisition and perpetual conservation of lands and certain improvements necessary to implement the goals and objectives of the MSHCP

SECTION 3. Administrative Responsibility. The Planning Department of the City shall be responsible for the administration of this Ordinance. Detailed administrative procedures concerning the implementation of this Ordinance may be established and set forth in a resolution adopted by the City Council.

SECTION 4. The Indian Wells Municipal Code is amended by adding Chapter 22.20 to read in its entirety as follows:

***Chapter 22.20
Multiple Species Habitat Conservation Plan Mitigation Fee**

22.20.010	Purpose.
22.20.020	Definitions.
22.20.030	Local development mitigation fee.
22.20.040	Imposition of the local development mitigation fee.
22.20.050	Payment of local development mitigation fee.
22.20.060	Refunds.
22.20.070	Collection, accounting and disbursement of local development mitigation fees.
22.20.080	Automatic annual fee adjustment.
22.20.090	Exemptions.
22.20.100	Fee credits.

22.20.010 Purpose. The MSHCP establishes a reserve of land to provide habitat for Covered Species. After land is acquired by the CVCC, a fund is established to fund a monitoring program to track and measure success of the Covered Species within the area defined by the MSHCP and a management program to assess and tailor preservation activities and land management practices in order to conserve Covered Species in perpetuity.

Land acquisition is a critical component of the conservation process because conserving land mitigates the effects of development and urbanization. Monitoring and Management (M&M) serve as an ongoing evaluation of the efficacy of conservation. The studies conducted as part of the monitoring program assesses the biological characteristics and particular needs of Covered Species within the MSHCP. The management program conducts a range of activities to ensure that the area identified in the MSHCP sustains the habitat by monitoring the areas preserved. Since land acquisition, monitoring and management are so intimately connected, conservation cannot be achieved without funding all three concurrently.

A Local Development Mitigation Fee (LDMF) is herein imposed on new development projects and will be the primary source of funding necessary to comply with the provisions of the MSHCP, the Implementing Agreement (IA), and the Permit. Therefore, this chapter sets forth the fees collected as pass through from development activity and is redirected to the CVCC in this conservation effort.

22.20.020 Definitions. As used in this Chapter, the following terms shall have the following meanings:

"Certificate of Occupancy" means a certificate of occupancy issued by the City in accordance with all applicable ordinances, regulations, and rules of the City and state law.

"City" means the City of Indian Wells, California.

"City Council" means the City Council of the City of Indian Wells, California.

"Commission" means the Coachella Valley Conservation Commission, the governing body established pursuant to the MSHCP that is delegated the authority to oversee and implement the provisions of the MSHCP.

"Conservation" means all the actions necessary for the permanent protection of species, natural communities and habitat land as required of the Coachella Valley Conservation Commission under the MSHCP including land acquisition, land management, biological monitoring, law enforcement and administration.

"Conservation Areas" has the same meaning and intent as such term is defined and utilized in the MSHCP.

"Credit" means a credit allowed pursuant to Section 12 of this Chapter, which may be applied against the Fee paid.

"Fee" means the Local Development Mitigation Fee adopted pursuant to the Mitigation Fee Act, Gov. Code section 66000 et seq., and pursuant to this Chapter and any City Council resolution adopted pursuant to this Chapter.

"Final Inspection" means a final inspection of a project as defined by the building codes of the City.

"Gross Acreage" means the total property area as shown on a land division map of record, or described through a recorded legal description of the property. This area shall be bounded by road right-of-way and/or legal property lines.

"Local Development Mitigation Fee" or "Fee" means the development impact fee imposed pursuant to the provisions of this Chapter.

"Multiple Species Habitat Conservation Plan" or "MSHCP" means the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan, adopted by the City Council on November 1, 2007.

"Ordinance" means Ordinance No. 2011-08 of the City of Indian Wells, California enacting this Chapter.

"Project" means any project undertaken pursuant to the issuance of a building permit or any other approval, ministerial or discretionary development permit, by the City as required by the applicable ordinances, regulations, and rules of the City and state law. Projects undertaken by or on behalf of the City are subject to the Fee.

"Project Area" means the area, measured in acres, from the adjacent road right-of-way line to the limits of project improvements. Project Area includes all project improvements and areas that are disturbed as a result of the project improvements on an owner's Gross Acreage, including all areas depicted on the forms required to be submitted to the City pursuant to this Chapter and/or other applicable development regulations.

"Residential Unit" means a building or portion thereof used by one family and containing but one kitchen, which unit is designed or occupied for residential purposes, including a single-family dwelling, a unit within a multiple-family dwelling, and mobile homes on permanent foundations, but not including hotels and motels.

"Revenue" or "Revenues" means any funds received by the City on behalf of the Commission pursuant to the provisions of this Chapter for the purpose of defraying all or a portion of the cost of acquiring and perpetually conserving vegetation communities and natural areas within the City and the region which are known to support threatened, endangered or key sensitive populations of plant and wildlife species.

22.20.030 Local development mitigation fee. To assist in providing Revenue for the Conservation of lands necessary to implement the MSHCP, the Fee shall be paid for each Project, or portion thereof, to be constructed within the City. Five categories of the Fee are defined and include: (1) residential units, density less than 8.0 dwelling units per acre; (2) residential units, density between 8.1 and 14.0 dwelling units per acre; (3) residential units, density greater than 14.1 dwelling units per acre; (4) commercial acreage; and (5) industrial acreage. Because there can be mixed traditional commercial, industrial and residential uses within the same project, for Fee assessment purposes only, the Fee which is applicable to commercial or industrial Projects shall be calculated by reference to the Project Area of each parcel upon which the commercial or industrial portions shall be sited. If the mixed use includes Residential Units, the Fee applicable to the parcels upon which Residential Units are to be sited shall be calculated by reference to the appropriate residential fee category. If the mixed use occurs on the same parcel, the Fee which is applicable to commercial or industrial projects shall be calculated by reference to the Project Area of the parcel. A fee schedule which contains the Fee which is applicable to each of the five Fee categories shall be adopted and may, from time to time, be amended by resolution of the City Council ("Resolution").

The amount of the Fee required to be paid for a commercial or industrial Project shall be based on the Project Area, as calculated by City staff based on the subdivision map, plot plan, and/or other information submitted to or required by the City.

22.20.040 Imposition of the local development mitigation fee. Notwithstanding any other provision of the City's Municipal Code, no permit shall be issued for any Project except upon the condition that the Fee applicable to such Project has been paid in accordance with the provisions of this Chapter.

22.20.050 Payment of local development mitigation fee.

(a) The Fee shall be paid in full at the time of the issuance of a building permit for the Project; provided, however, that if the City's Municipal Code provides for all fees assessed pursuant to the Mitigation Fee Act to be collected at a later time, then the Fee collected pursuant to this Chapter shall be collected at the same time as that mandated by the City's Municipal Code for the payment of all such other fees.

(b) In no event shall a final inspection be made or a certificate of occupancy be issued prior to full payment of the Fee.

(c) The Fee shall be assessed one time per lot or parcel, except in cases of the construction of additional Residential Units, subsequent development of portions of a commercial or industrial parcel for which the Fee was not originally collected, or changes in land use. The additional Fee required to be paid in the case of such exceptions shall not include the amount of any previously paid Fee for that parcel. No refunds shall be provided for changes in land use to a lower Fee category. It shall be the responsibility of the applicant to provide documentation of any previously paid Fee.

(d) The Fee required to be paid under this Chapter shall be the Fee in effect at the time of payment.

(e) Notwithstanding anything in the City's Municipal Code, or any other written documentation to the contrary, the Fee shall be paid whether or not the Project is subject to conditions of approval by the City.

(f) If all or part of the Project is sold prior to payment of the Fee, the Project shall continue to be subject to the requirement to pay the Fee as provided herein.

(g) For Projects which the City does not require a permit, final inspection or issuance of a certificate of occupancy, the Fee shall be paid prior to any use or occupancy.

(h) For purposes of this Chapter, congregate care residential facilities and recreational vehicle parks shall pay the commercial acreage Fee.

22.20.060 Refunds.

(a) Except as provided in Section 8 B, there shall be no refund of all or part of any Fee paid under this Chapter, except in cases of overpayment or miscalculation of the applicable Fee.

(b) Collection of the fee associated with the Fringe-toed Lizard Habitat Conservation Plan (FTL HCP) ceased upon Issuance of the MSHCP permit. Projects that paid the FTL HCP fee are required to pay the Local Development Mitigation Fee but may obtain a refund of the FTL HCP fee from CVCC. Refunds shall be granted subject to the rules and regulations established by the Coachella Valley Conservation Commission.

22.20.070 Collection, accounting and disbursement of local development mitigation fees.

(a) Subject to the provisions of this section, all Fees collected pursuant to this Chapter shall be collected, administered and remitted for deposit into the account established therefor, to the Commission in compliance with all applicable policies and procedures of the Commission monthly. The Fees will be expended solely for the purpose of Conservation of the vegetation communities and natural areas within the City and the region which support species covered in the MSHCP in accordance with the plan and schedules set out in the MSHCP and the policies that have or may be adopted pursuant thereto.

(b) The City may recover the costs of administering the provisions of this Chapter using the Revenues generated by the Fees, in an amount and subject to the rules and regulations established by the Commission.

22.20.080 Automatic annual fee adjustment. The Fee established by this Chapter shall be revised annually by means of an automatic adjustment at the beginning of each fiscal year (July 1) based on the average percentage change over the previous calendar year set forth in the Consumer Price Index for "All Urban Consumers" in the Los Angeles-Anaheim-Riverside Area, measured as of the month of December in the calendar year which ends in the previous fiscal year. The first Fee adjustment shall not be effective prior to a minimum of ten (10) months subsequent to the effective date of this Chapter.

22.20.090 Exemptions. The following types of construction shall be exempt from the provisions of this Chapter:

(a) Reconstruction of a residential unit or commercial or industrial building damaged or destroyed by fire or other natural causes.

(b) Rehabilitation or remodeling to an existing residential unit, commercial or industrial building, and additions to an existing residential unit or commercial or industrial building.

(c) A second Residential Unit, constructed on residential property previously developed with a single-family dwelling, and meeting all state and City requirements for such units.

(d) Existing improvements that are converted from an existing permitted use to a different permitted use, provided that no additional area of the property is disturbed as a result of such conversion.

(e) Projects for which the City is restrained by law from collecting the Fee due to a Development Agreement or vested tentative map entered into with or issued by the City prior to October 1, 2008.

(f) Construction of a family residential unit upon property wherein a mobile-home, installed pursuant to an installation permit, was previously located prior to the effect date of this Chapter.

(g) Guest dwellings constructed on residential property previously developed with a single-family dwelling.

(h) Additional single family residential units located on the same parcel pursuant to the provisions of any agricultural zoning classifications set forth in the nCity Municipal Code.

(i) Kennels and Catteries established in connection with an existing single family Residential Unit and as defined and if allowed by the City Municipal Code.

(j) Projects are exempt from paying the fee provided they meet each of the following three conditions:

(1) Completion of required infrastructure improvements including, but not limited to, underground utilities, exterior project area walls, streets and curbs and issuance of at least one building permit for a discrete primary structure, such as a single family home, prior to October 1, 2008 (date of MSHCP Permit Approval).

(2) Continuous construction activity since October 1, 2008 as demonstrated by issuance of a building permit for a discrete primary structure and/or a certificate of occupancy permit for a discrete primary structure in each six month period between October 1, 2008 and April 1, 2011.

(3) City registration of the Project and proposed lots to be exempted, in accordance with CVCC procedures, by September 1, 2011.

Projects not meeting the standard exemption criteria above, that made verifiable payments, as part of a legal settlement, to specifically fund acquisition of habitat for a species listed as "endangered" under the federal Endangered Species Act are required

to pay the LDMF but are eligible to receive a refund, on a pro rata per acre basis based on the actual acreage being assessed the LDMF. Any such Projects and proposed lots to be exempted must be registered in accordance with CVCC procedures by September 1, 2011.

22.20.100 Fee credits. The City may grant to owners or developers of real property, a Credit against the Fee that would otherwise be charged pursuant to this Chapter, for the dedication of land within a MSHCP Conservation Area, provided, however, that no Credit shall be given unless (A) the dedication is secured by a conservation easement acceptable to a grantee legally authorized to accept and hold such easements pursuant to Civil Code § 815.3 or pursuant to other legal instrument that ensures the area will be conserved in perpetuity; (B) the land to be dedicated is appropriate for conservation and dedication thereof is consistent with and furthers the goals of the MSHCP; and (C) the dedication and Credit complies with all procedures and policies of the Commission. The amount of the Credit granted shall be determined by an estimate of the fair market value of the land dedicated. Any Credit granted by the City shall be given in stated dollar amounts only.

An applicant for a proposed Project may apply for Credit to reduce the amount of the Fee required to be paid prior to approval of the Project. Any Credit granted and the amount of the Fee to be paid shall be included as a condition of approval of the Project. However, if an applicant has already received approval from the City and has not previously applied for a Credit to reduce the amount of the Fee required to be paid, an applicant may apply for such Credit at any time prior to issuance of a grading permit for the Project and any Credit granted shall in that case be included as a condition of approval of the grading permit issued for the Project."

SECTION 5. Severability. This Ordinance and the various parts, sections, and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, section, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected thereby. If any part, sentence, paragraph, section, or clause of this Ordinance, or its application to any person entity is adjudged unconstitutional or invalid, such unconstitutionality or invalidity shall affect only such part, sentence, paragraph, section, or clause of this Ordinance, or person or entity; and shall not affect or impair any of the remaining provision, parts, sentences, paragraphs, sections, or clauses of this Ordinance, or its application to other persons or entities. The City Council hereby declares that this Ordinance would have been adopted had such unconstitutional or invalid part, sentence, paragraph, section, or clause of this Ordinance not been included herein; or had such person or entity been expressly exempted from the application of this Ordinance.

SECTION 6. Effective Date. This Ordinance shall take effect September 1, 2011; provided, however, in no event shall this Ordinance take effect prior to sixty (60) days after the date of its adoption.

SECTION 7. Repealed. Ordinance No. 609 is hereby repealed on the effective date of this Ordinance and all prior ordinances adopting the Local Development Mitigation Fee are hereby repealed to the extent that they are inconsistent with the provisions of this Ordinance.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on the 4th day of August, 2011.

PATRICK J. MULLANY
MAYOR