



PLANNING COMMISSION

SUPPLEMENTAL MEMORANDUM

MEETING DATE: FEBRUARY 24, 2020

ITEM NUMBER: PH-3

SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE (CODE AMENDMENT CO-2020-01) TO ADD AND AMEND ARTICLE 4 TO CHAPTER XII OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE (PLANNING, ZONING AND DEVELOPMENT), THAT ESTABLISHES A NEW OPEN SPACE AND PUBLIC PARK IMPACT FEE PURSUANT TO MEASURE Z

DATE: FEBRUARY 24, 2020

FROM: PLANNING DIVISION / DEVELOPMENT SERVICES DEPARTMENT
& CITY ATTORNEY'S OFFICE

PRESENTATION BY: JENNIFER LE, ASSISTANT DIRECTOR OF DEVELOPMENT SERVICES

FOR FURTHER INFORMATION CONTACT: JENNIFER LE, ASSISTANT DIRECTOR OF DEVELOPMENT SERVICES
jennifer.le@costamesaca.gov

The purpose of this memo is to provide the accompanying Resolution to the Draft Ordinance (Code Amendment 2020-01) pertaining to the establishment of a new Open Space and Public Park Impact Fee pursuant to Measure Z. The Resolution was inadvertently left out of the original staff report.

In addition, this memo modifies the staff recommendation to include a reference to the Resolution as follows:

Staff recommends that the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) (General Rule Exemption);
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment CO-2020-01; and
3. Codifying the Open Space and Public Park Impact Fee provisions pursuant to Measure Z.

The Resolution reflects the information previously provided.


JENNIFER LE
Assistant Director of Development Services


BARRY CURTIS, AICP
Director of Economic and Development Services

Attachments: Draft Resolution

Distribution: Director of Economic and Development Services
Assistant Director of Development Services
Assistant City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Marshall
File

RESOLUTION NO. PC-2020-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE (CODE AMENDMENT 2020-01) ADDING AND AMENDING ARTICLE 4 OF CHAPTER XII OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE AS ADOPTED BY SECTION 5 OF MEASURE Z, THE COSTA MESA MEASURE FOR SENSIBLE COMMUNITY DEVELOPMENT AND DEVELOPMENT-FUNDED OPEN SPACE AND RECREATION, RELATING TO THE OPEN SPACE AND PUBLIC PARK IMPACT FEE

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, at the November 8, 2016 general election the Citizens of Costa Mesa adopted a citizens sponsored initiative known as Measure Y by a majority vote; and

WHEREAS, at the November 8, 2016 general election the Citizens of Costa Mesa also adopted a City sponsored initiative known as Measure Z by a majority vote; and

WHEREAS, Measure Y received the greatest number of total votes; and

WHEREAS, Measures Y and Z each deal with the same subject matter; and

WHEREAS, Measure Y, Section __ 12., provides: *If another ballot measure is placed on the same ballot as this measure and deals with the same subject matter, and if both measures pass, the voters intend that both measures shall be put into effect, except to the extent that specific provisions of the measures are in direct conflict. In the event of a direct conflict, the measure which obtained more votes will control as to the directly conflicting provisions only. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure; and*

WHEREAS, the provisions of Measure Z directly conflict with the provisions of Measure Y, except for Section 5, Establishment of Open Space and Public Park Impact Fee and Open Space & Recreation Advisory Committee, which does not conflict with any of the provisions of Measure Y; and

WHEREAS, Section 5 of Measure Z states, in part: *By this Measure, the People of the City of Costa Mesa hereby add Article 4, to Chapter XII of Title 13 to the City's Municipal Code for the purpose of establishing a new open space and public park impact fee (the "Open Space and Public Park Impact Fee" or "Fee"). The Fee shall be applicable to all new development located both north of the 405 freeway and west of Fairview Drive. The Open Space and Public Park Impact Fee shall be due upon issuance of a certificate of occupancy. The Open Space and Public Park Impact Fee is established to offset the*

impact of development upon recreational opportunities and shall be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City, which uses may include, but would not be limited to, the maintenance and development of Fairview Developmental Center upon its anticipated closure.

The amount of the Open Space and Public Park Impact Fee shall be the maximum amount permissible pursuant to the Mitigation Fee Act, and shall be established pursuant thereto; provided, however, in no event shall the Fee exceed \$1.50/square foot of new development; and

WHEREAS, Section 7 of Measure Z states: *Except as otherwise provided herein, any future changes or amendments to this ordinance, if approved, including any future changes or amendments to the General Plan, Specific Plan(s), Overlay Plan(s), or Municipal Code provisions affected by the Measure, may occur in the manner set forth in State law and the City's Municipal Code, and shall not require a vote of the people; and*

WHEREAS, the City desires to codify the above referenced portions of Section 5 of Measure Z for inclusion into the Costa Mesa Municipal Code; and

WHEREAS, the City desires to thereafter establish the amount of the fee pursuant to the requirements of the Mitigation Fee Act and Measure Z via resolution; and

WHEREAS, the City, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and

WHEREAS, the City finds that the provisions of this Ordinance are consistent with the City of Costa Mesa's General Plan; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 24, 2020 with all persons having the opportunity to speak for and against the proposal; and,

NOW THEREFORE, THE COSTA MESA PLANNING COMMISSION RESOLVES AS FOLLOWS:

1. Pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq.), the City of Costa Mesa has determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations.
2. The Planning Commission recommends the City Council give first reading to an Ordinance (Code Amendment 2020-01), attached hereto as Exhibit A, adding and amending Article 4 of Chapter XII of Title 13 of the Costa Mesa Municipal Code as adopted by Section 5 of Measure Z, the Costa Mesa Measure For Sensible

Community Development and Development-Funded Open Space And Recreation,
relating to the Open Space and Public Park Impact Fee.

BE IT FURTHER RESOLVED that the CEQA exemption for this project reflects the independent judgement of the City of Costa Mesa.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 24th day of February, 2020.

Byron de Arakal, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Barry Curtis, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2020-__ was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on February 24, 2020 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Barry Curtis, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2020-__

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PLANNING COMMISSION AGENDA REPORT

MEETING DATE: FEBRUARY 24, 2020

ITEM NUMBER: PH-3

SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE (CODE AMENDMENT CO-2020-01) TO ADD AND AMEND ARTICLE 4 TO CHAPTER XII OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE (PLANNING, ZONING AND DEVELOPMENT), THAT ESTABLISHES A NEW OPEN SPACE AND PUBLIC PARK IMPACT FEE PURSUANT TO MEASURE Z

DATE: FEBRUARY 19, 2020

FROM: PLANNING DIVISION/DEVELOPMENT SERVICES DEPARTMENT & CITY ATTORNEY'S OFFICE

PRESENTATION BY: JENNIFER LE, ASSISTANT DIRECTOR OF DEVELOPMENT SERVICES

**FOR FURTHER INFORMATION CONTACT: JENNIFER LE, ASSISTANT DIRECTOR OF DEVELOPMENT SERVICES
jennifer.le@costamesaca.gov**

RECOMMENDATION:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) (General Rule Exemption);
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment CO-2020-01; and
3. Codifying the Open Space and Public Park Impact Fee provisions pursuant to Measure Z.

APPLICANT OR AUTHORIZED AGENT:

This Code Amendment has been initiated by the City of Costa Mesa.

BACKGROUND:

Measures Y and Z were voter-approved initiatives that both received a majority of votes in the November 8, 2016 election. Measure Y received the greatest number of total votes; therefore, the provisions of Measure Y control. Under Measure Y, any provision of Measure Z that does not directly conflict with the provisions of Measure Y is to be adopted – notwithstanding any contrary provisions in Measure Z. The only provision of Measure Z that does not directly conflict with the provisions of Measure Y is Section 5, Establishment of Open Space and Public Park Impact Fee and Open Space & Recreation Advisory Committee. These provisions are discussed in detail in the below Analysis section.

Previous Review

A previous version of this ordinance that also included the establishment of and revisions to the Open Space & Recreation Advisory Committee (OSRAC) was considered and recommended for approval by the Planning Commission on April 10, 2017. The City Council thereafter conducted a first reading and introduced the ordinance on May 2, 2017. However, a second reading and adoption was not conducted, primarily because of matters surrounding the composition of various City committees, including the OSRAC.

April 10, 2017 Planning Commission Hearing

Staff Report: <http://ftp.costamesaca.gov/costamesaca/planningcommission/agenda/2017/2017-04-10/PH-1.pdf>

Minutes: <https://www.costamesaca.gov/home/showdocument?id=26065>

Video: http://costamesa.granicus.com/MediaPlayer.php?view_id=10&clip_id=3007

May 2, 2017 City Council hearing

Staff Report: <http://ftp.costamesaca.gov/costamesaca/council/agenda/2017/2017-05-02/PH-2.pdf>

Minutes: <https://www.costamesaca.gov/home/showdocument?id=26968>

Video: http://costamesa.granicus.com/MediaPlayer.php?view_id=10&clip_id=3014

Codification of the Fee was postponed at that time. Staff is bringing this item forward now to ensure the Fee is codified, particularly since the pending One Metro West project and other projects as well would be subject to this Fee. The OSRAC will have a role in determining where and how Measure Z funds can be spent. However, the OSRAC itself will not be necessary until the applicable fees are collected; it is anticipated that the OSRAC will be created by subsequent action of the City Council.

DESCRIPTION:

The proposed ordinance follows the adoption of Section 5 of Measure Z at the November 8, 2016, general election. Measure Z establishes the Open Space and Public Park Impact Fee (Fee) applicable to all new development located both north of the I-405 freeway and west of Fairview Drive. The proposed action codifies the provisions of the Measure Z Fee

in the Zoning Code. The Draft Ordinance is provided as Attachment 1 to this report. Measure Z itself is provided as Attachment 2.

ANALYSIS:

The proposed ordinance codifies and amends provisions of Title 13, Chapter XII, Article 4, of the Costa Mesa Municipal Code relating to the establishment of an open space and public park impact fee. Article 4 was adopted by the voters, and, as such, the Fee provisions are legally binding. However, the Fee provisions themselves have not yet been codified, and as drafted Article 4 is not suitable to codification in the Zoning Code. Accordingly, staff proposes non-substantive revisions that divide Article 4 into three separate sections. Staff is also proposing one substantive revision to make the open space and public park impact fee for all development due prior to issuance of building permits, rather than prior to issuance of building permit final/certificate of occupancy.

Because the Open Space and Public Park Impact Fee itself is subject to the Mitigation Fee Act, a study will be conducted to determine the exact fees to be imposed. The study is being performed as part of a City-wide fee study which is currently underway. The amount of the Fee will be set by resolution of the City Council concurrently with the adoption of this ordinance. Measure Z establishes a maximum fee of up to \$1.50 per square foot of new development, though the fee study may establish a lesser fee if appropriate.

Adoption of the Non-Conflicting Provisions of Measure Z.

As a general rule of statutory construction, two initiatives relating to the same subject matter must be read together and reconciled whenever possible. See *Ctr. for Public Interest Law v. Fair Political Practices Com* (1989) 210 Cal.App.3d 1476, 1480; *Estate of Gibson* (1983) 139 Cal.App.3d 733. The California Supreme Court has stated that “[w]hen practicable, a court should construe two or more initiative measures as complementary or supplementary rather than as competing or conflicting, so that the expressed will of the voters is given the greatest possible deference.” *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 988–989.

Here, Measure Z presents itself as conflicting with Measure Y, because it contains the following conflict language:

This Measure is intended to comprehensively regulate the same subject as the Initiative – the General Plan, Specific Plan(s), Overlay Plan(s) and applicable provisions of the Municipal Code. If a majority of voters approve both the Initiative and the Costa Mesa Measure for Sensible Community Development and Development-Funded Open Space and Recreation, the ballot measure with the higher percentage of the vote will control. Therefore, if both measures are approved and the Costa Mesa Measure for Sensible Community Development and Development-Funded Open Space and Recreation receives a higher percentage of the vote than the Initiative, none of the changes or additions proposed by the Initiative will be implemented. (Emphasis added.)

However, while Measure Z presents itself as directly conflicting, the language of Measure Y is different, and requires that the specific provisions of other measures that are not in direct conflict with Y to be put into effect – notwithstanding the conflict language of Measure Z.

Measure Y, Sec. ____ 12. *Consistency with Other Ballot Measures*, states:

If another ballot measure is placed on the same ballot as this measure and deals with the same subject matter, and if both measures pass, the voters intend that both measures shall be put into effect, except to the extent that specific provisions of the measures are in direct conflict. In the event of a direct conflict, the measure which obtained more votes will control as to the directly conflicting provisions only. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure. (Emphasis added.)

The net effect of the controlling language of Measure Y when compared to Measure Z is that any provision of Z that does not directly conflict with Y is to be adopted. However, this does not mean that non-conflicting provisions of Measure Z get adopted into Measure Y and added to the Municipal Code as a part of Y. Rather, any non-conflicting provision of Z would be controlled by the provisions of Z and would be adopted into a separate portion of the Municipal Code. While Measure Y requires that any amendments to Measure Y be approved by the voters, Measure Z allows the City Council to amend the provisions of Z in the normal manner for City ordinances.

The only provision of Measure Z that does not directly conflict with the provisions of Measure Y is Section 5, Establishment of Open Space and Public Park Impact Fee and Open Space & Recreation Advisory Committee. Section 5 of Measure Z adds a new Article 4 to Chapter XII, Special Fee Assessments, to the Costa Mesa Municipal Code. It also creates a new Open Space & Recreation Advisory Committee as an advisory body of limited duration to the City Council whose purpose is to advise the Council on the expenditure of the fees collected by this new Article 4. Section 5 of Measure Z, Establishment of Open Space and Public Park Impact Fee and Open Space & Recreation Advisory Committee, provides:

By this Measure, the People of the City of Costa Mesa hereby add Article 4, to Chapter XII of Title 13 to the City's Municipal Code for the purpose of establishing a new open space and public park impact fee (the "Open Space and Public Park Impact Fee" or "Fee"). The Fee shall be applicable to all new development located both north of the 405 freeway and west of Fairview Drive. The Open Space and Public Park Impact Fee shall be due upon issuance of a certificate of occupancy. The Open Space and Public Park Impact Fee is established to offset the impact of development upon recreational opportunities and shall be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City, which uses may include, but would not be limited to, the maintenance and development of Fairview Developmental Center upon its anticipated closure.

The amount of the Open Space and Public Park Impact Fee shall be the maximum amount permissible pursuant to the Mitigation Fee Act, and shall be established pursuant thereto; provided, however, in no event shall the Fee exceed \$1.50/square foot of new development.

A citizen committee is hereby created, and shall be known as the open space & recreation advisory committee (the "Open Space & Recreation Advisory Committee" or "Committee"), whose role shall be to advise the City Council on expenditures of the Open Space and Public Park Impact Fee. The Open Space and Public Park Impact Fee shall be only spent after receiving the advice and recommendation of the Committee.

The Open Space & Recreation Advisory Committee shall consist of seven (7) members of the public who are appointed by the City Council. The seven (7) members shall consist of: the Mayor, one (1) City Councilmember chosen by a majority of the City Council, one (1) representative of a Costa Mesa youth football organization chosen by a majority of the City Council, one (1) representative of a Costa Mesa youth baseball organization chosen by a majority of the City Council, one (1) representative of a Costa Mesa youth soccer organization chosen by a majority of the City Council, one (1) representative of the Newport Mesa Unified School District ("NMUSD") chosen by a majority vote of the NMUSD trustees, and one (1) member from a properly formed and actively operating California corporation whose primary focus is issues of environmental concern chosen by a majority of the City Council. The members shall be appointed at a time and place pursuant to Council policy. The Committee shall comply with the Brown Act and the Fair Political Practices Act, including but not limited to all disclosures required therein. City Staff shall provide the necessary support for the Committee's meetings and other official business. The City Council shall budget an appropriate amount of funds collected from the Open Space & Public Park Impact Fee for the Committee's activities, recognizing that interfund transfers may be necessary at the beginning of the Committee's formation before sufficient Open Space and Public Park Impact Fees have been collected. The Open Space & Recreation Advisory Committee shall sunset, and unless renewed by the City Council cease to exist, upon making its final recommendations to the City Council for active and passive recreational uses at Fairview Developmental Center, or 5 years after the effective date of this Measure, whichever shall first occur.

Based on the above analysis, Section 5 of Measure Z was enacted by the voters at the November 8, 2016 election.

The City Council May Amend or Change Section 5 of Measure Z.

Elections Code section 9217 provides in relevant part:

No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance. Elections Code § 9217.

By its terms, Measure Y can only be amended or repealed by a vote of the electorate.

However, Section 7 of Measure Z provides:

Except as otherwise provided herein, any future changes or amendments to this ordinance, if approved, including any future changes or amendments to the General Plan, Specific Plan(s), Overlay Plan(s), or Municipal Code provisions affected by the Measure, may occur in the manner set forth in State law and the City's Municipal Code, and shall not require a vote of the people. (Emphasis added.)

An amendment is any change of the scope or effect of an existing statute or ordinance, whether by addition, omission, or substitution of provisions, that does not wholly terminate its existence, whether by an act purporting to amend, repeal, revise, or supplement, or by an act independent and original in form. See *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 40, 41; *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776–777; Cal. Forms of Pleading and Practice, § 302.29.

Codification of and Revisions to Article 4, Chapter XII of the Zoning Code.

Staff is proposing that Article 4 as written be separated into three sections, without substantive revision, for ease of codification. Staff also recommends one substantive revision to specify that the Fee shall be due prior to issuance of a building permit rather than prior to issuance of a building permit final/ certificate of occupancy. This change will make the due date for fee provisions of Article 4 consistent with other provisions of Chapter XII, and will enhance the City's ability to actually collect the impact fee prior to construction and completion of a project.

GENERAL PLAN CONFORMANCE:

The proposed Code Amendment is consistent with the following objectives of the General Plan:

- **Policy LU-5.5** – Ensure that new development pays its fair share of impact fees such as park fees and traffic impact fees.
- **Objective OSR-1A** – Maintain and preserve existing parks and strive to provide additional parks, public spaces and recreation facilities that meets community needs.

Implementation of the subject Code Amendment would ensure that appropriate fees are collected from development for incremental demand and associated impacts to open space.

ENVIRONMENTAL DETERMINATION:

The ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) because there is no possibility that the proposed amendment to the Zoning Code will have a significant effect on the environment.

ALTERNATIVES:

The Planning Commission could recommend that the existing provisions of Section 5 of Measure Z remain unchanged. The Commission may also suggest modifications to the proposed Ordinance. The Planning Commission recommendation will be forwarded to the City Council for consideration.

LEGAL REVIEW:

The draft ordinance has been reviewed and approved as to form by the City Attorney's Office.

PUBLIC NOTICE:

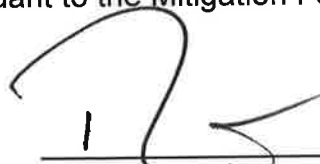
Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, a 1/8th page public notice was published once in the Daily Pilot newspaper no less than 10 days prior to the public hearing.

CONCLUSION:

Staff recommends that the Planning Commission recommend that the City Council give first reading to and adopt Code Amendment CO-2020-01, given that the provisions have been approved by the voters of Costa Mesa. If approved, the Ordinance would become effective 30 days after the second reading by the City Council. The proposed Ordinance does not set the fee amount. The fee amount will be determined by resolution of the City Council based on a fee study prepared pursuant to the Mitigation Fee Act.



JENNIFER LE
Assistant Director of Development Services



BARRY CURTIS, AICP
Director of Economic and Development Services

Attachments: 1. Draft Ordinance
2. Measure Z

Distribution: Director of Economic and Development Services
Assistant Director of Development Services
Assistant City Attorney
Public Services Director
City Engineer
Transportation Services Manager
Fire Marshall
File

ORDINANCE NO. 2020-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA ADDING AND AMENDING ARTICLE 4 OF CHAPTER XII OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE AS ADOPTED BY SECTION 5 OF MEASURE Z, THE COSTA MESA MEASURE FOR SENSIBLE COMMUNITY DEVELOPMENT AND DEVELOPMENT-FUNDED OPEN SPACE AND RECREATION, ORDINANCE NO. 2020-XX (CODE AMENDMENT 2020-01), RELATING TO THE OPEN SPACE AND PUBLIC PARK IMPACT FEE

WHEREAS, at the November 8, 2016 general election the Citizens of Costa Mesa adopted a citizens sponsored initiative known as Measure Y by a majority vote; and

WHEREAS, at the November 8, 2016 general election the Citizens of Costa Mesa also adopted a City sponsored initiative known as Measure Z by a majority vote; and

WHEREAS, Measure Y received the greatest number of total votes; and

WHEREAS, Measures Y and Z each deal with the same subject matter; and

WHEREAS, Measure Y, Section __ 12., provides: *If another ballot measure is placed on the same ballot as this measure and deals with the same subject matter, and if both measures pass, the voters intend that both measures shall be put into effect, except to the extent that specific provisions of the measures are in direct conflict. In the event of a direct conflict, the measure which obtained more votes will control as to the directly conflicting provisions only. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure; and*

WHEREAS, the provisions of Measure Z directly conflict with the provisions of Measure Y, except for Section 5, Establishment of Open Space and Public Park Impact Fee and Open Space & Recreation Advisory Committee, which does not conflict with any of the provisions of Measure Y; and

WHEREAS, Section 5 of Measure Z states, in part: *By this Measure, the People of the City of Costa Mesa hereby add Article 4, to Chapter XII of Title 13 to the City's Municipal Code for the purpose of establishing a new open space and public park impact fee (the "Open Space and Public Park Impact Fee" or "Fee"). The Fee shall be applicable to all new development located both north of the 405 freeway and west of Fairview Drive. The Open Space and Public Park Impact Fee shall be due upon issuance of a certificate of occupancy. The Open Space and Public Park Impact Fee is established to offset the impact of development upon recreational opportunities and shall be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City, which uses may include, but would not be limited to, the maintenance and development of Fairview Developmental Center upon its anticipated closure.*

The amount of the Open Space and Public Park Impact Fee shall be the maximum amount permissible pursuant to the Mitigation Fee Act, and shall be established pursuant thereto; provided, however, in no event shall the Fee exceed \$1.50/square foot of new development; and

WHEREAS, Section 7 of Measure Z states: *Except as otherwise provided herein, any future changes or amendments to this ordinance, if approved, including any future changes or amendments to the General Plan, Specific Plan(s), Overlay Plan(s), or Municipal Code provisions affected by the Measure, may occur in the manner set forth in State law and the City's Municipal Code, and shall not require a vote of the people; and*

WHEREAS, the City Council desires to codify the above referenced portions of Section 5 of Measure Z for inclusion into the Costa Mesa Municipal Code; and

WHEREAS, the City Council desires to thereafter establish the amount of the fee pursuant to the requirements of the Mitigation Fee Act and Measure Z via resolution; and

WHEREAS, the City of Costa Mesa, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq.) has determined that the Ordinance is exempt pursuant to Section 15061(b)(3) of Title 14 the California Code of Regulations; and

WHEREAS, the City Council finds that the provisions of this Ordinance are consistent with the City of Costa Mesa's General Plan; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

NOW, THEREFORE, THE COSTA MESA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

SECTION 2. Title 13, Chapter XII, Article 4, of the Costa Mesa Municipal Code is hereby added to the Costa Mesa Municipal Code, which is amended to read as follows:

Sec. 13-276.1. - Purpose.

The Open Space and Public Park Impact Fee is established to offset the impact of development upon recreational opportunities and shall be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City, which uses may include but is not limited to, the maintenance and development of Fairview Developmental Center upon its anticipated closure.

Sec. 13-276.2. – Applicability.

The Open Space and Public Park Impact Fee shall be applicable to all new development located both north of the 405 freeway and west of Fairview Drive.

Sec. 13-276.3. - Establishment of development impact fee; amount.

(a) The amount of the Open Space and Public Park Impact Fee shall be the maximum amount permissible pursuant to the Mitigation Fee Act, and shall be established pursuant thereto; provided, however, in no event shall the Fee exceed \$1.50/square foot of new development.

(b) The Open Space and Public Park Impact Fee shall be due upon issuance of a building permit.

SECTION 3. Inconsistencies.

Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

SECTION 4. Severability.

If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

SECTION 5. Effective Date.

This Ordinance shall become effective on the earliest date allowed by law.

SECTION 7. The City Clerk shall certify the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

APPROVED AND ADOPTED on this ____ day of ____, 2020.

Katrina Foley, Mayor

ATTEST:

Brenda Green

City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, CITY CLERK of the City of Costa Mesa, do hereby certify that the foregoing Ordinance was introduced and adopted at a regular meeting of the by the City Council of the City of Costa Mesa, California, at a regular meeting thereof held on the ____ day of _____, 2020, by the following vote of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

BRENDA GREEN, City Clerk

COUNCIL SPONSORED INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Council for the City of Costa Mesa submits the following ordinance to the voters of the City for approval and enactment:

ORDINANCE NO. 2016 – 07

AN ORDINANCE OF THE CITY OF COSTA MESA CALIFORNIA, KNOWN AS THE COSTA MESA MEASURE FOR SENSIBLE COMMUNITY DEVELOPMENT AND DEVELOPMENT-FUNDED OPEN SPACE AND RECREATION

WHEREAS, an initiative known as the Initiative to Require Voter Approval of Certain Development Projects (the "Initiative") has been submitted to the voters pursuant to Elections Code Section 9215; and

WHEREAS, the City Council has determined that adoption of the Initiative is not in the best interests of the community and desires to submit a directly competing measure to the voters for consideration pursuant to Elections Code Section 9222; and

WHEREAS, the City Council has submitted the following measure (the "Measure") to the voters for said purpose; and

WHEREAS, the Measure, if adopted, would ratify the City's existing General, Specific, and Overlay Plans, as well as the City's Zoning Code; and

WHEREAS, the City is approximately 98% built out, and hence few opportunities exist for the creation of new athletic fields, and to provide new recreational opportunities for the community; and

WHEREAS, Notwithstanding the impact of the development of the City on the ability to create new recreational opportunities, the City Council has adopted a policy by which it has declared that it is dedicated to creating partnerships with local youth sports organizations to ensure there is ample opportunity to participate in athletics at various ability levels, with a primary goal of providing athletic opportunities and ensuring athletic fields remain safe and of a high quality; and

WHEREAS, despite the impact of the development of the City on the ability to create new recreational opportunities, and in particular the opportunity to create new athletic fields, there exists a critical need for such facilities as demonstrated, for instance, by facts such as:

(i) in 2014 the City permitted youth sports organizations to use 51,016 hours (which is equivalent to six years) of field time on all the City's existing athletic fields,

(ii) there are 13 organized sports groups who compete for the ability to use Costa Mesa athletic fields,

(iii) approximately 5,000 adults and children use Costa Mesa's athletic fields each year; and

(iv) the State has contemplated the repeal of daylight savings time, and should that occur, an additional 4000 hours of field time will be lost, causing further concerns that there will not be enough fields available for all of the individuals and sports who desire to use them;

(v) in order to accommodate the estimated 2016 demand for athletic field usage, the city is in need of new multi-purpose athletic fields; and

WHEREAS, the pending closure of the Fairview Developmental Center presents the community with a unique opportunity to create additional outdoor recreational experiences, including but not limited to youth sports fields, within the City of Costa Mesa; and

WHEREAS, this Measure, if passed, would ratify the existing General, Specific, and Overlay Plans, as well as the City's Zoning Code to ensure that if the State proceeds with the closure of Fairview Developmental Center, approximately 25.6 of the 102.6 total acres will be required to be zoned as either passive or recreational open space, and any change to this requirement would require a vote of the people;

WHEREAS, the area located both north of the 405 Freeway and West of Fairview Drive, presents another unique opportunity for the creation of athletic fields and other recreational opportunities, in that it contains large parcels that the City anticipates will be redeveloped in the near future; however, current plans for the redevelopment of such sites do not appear to contemplate uses for recreational activities; and

WHEREAS, this Measure, if passed, would facilitate development of new recreational opportunities, including the development of sports fields, by imposing a new development impact fee (the "Open Space and Public Park Impact Fee") on all new development located both north of the 405 and west of Fairview Drive, to offset impacts created by such development upon recreational opportunities, including the elimination of the ability to construct athletic fields and otherwise implement recreational opportunities in such areas; and

WHEREAS, in order to ensure oversight, transparency, and input from all affected stakeholders, this Measure, if passed would also form a new citizen committee called the Open Space & Recreation Advisory Committee, which would be subject to the Brown Act and the Fair Political Practices Act, and which would be responsible for

providing guidance regarding expenditures of the new Open Space and Public Park Impact Fee, and the recreational needs of the community to the City Council.

THE PEOPLE OF THE CITY OF COSTA MESA DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Name.

This ballot measure shall be known and may be cited as the "Costa Mesa Measure for Sensible Community Development and Development-Funded Open Space and Recreation" and shall be referred to herein as "the Measure."

SECTION 2: Purpose.

The purpose of this Measure is to directly compete with the Initiative, which proposes a number of amendments to the Municipal Code. The Measure, if adopted, will:

(a) ratify the City's General Plan, approved by the City Council on June 21, 2016, which specifically designates not less than 25%, or approximately 25.6 of the 102.6 total acres of the Fairview Developmental Center as either passive or recreational open space, in anticipation of the Center's future closure, and that any change to this requirement shall require a vote of the people;

(b) ratify the City's Zoning Code, as well as all of the City's Specific Plans and Overlay Plans as those documents exist on the effective date of this Ordinance, including but not limited to: the 2015-2035 General Plan, adopted on June 21, 2016; the Baker Street and Paularino Avenue Specific Plan (SP-78-02); the Placentia/Hamilton/Pomona/19th Specific Plan (SP-79-01); the Bristol Street Specific Plan (SP-82-01); the East 17th Street Specific Plan (SP-84-01); the Harbor/Bernard/Parsons/Ford Specific Plan (SP-84-02); the North Costa Mesa Specific Plan (SP-94-01); the Avocado Street Specific Plan (SP-86-01); the Newport Boulevard Specific Plan (SP-96-01); the Costa Mesa Theater & Arts District Plan (SP-03-01); the SoBECA Urban Plan (SP-05-06); the 19 West Urban Plan (SP-05-07); the Mesa West Bluffs Urban Plan (SP-05-08); the Mesa West Residential Ownership Urban Plan (SP-05-09); and Title 13 of the Costa Mesa Municipal Code (Planning, Zoning and Development).

(c) Amend the City's Municipal Code to add a development impact fee known as the Open Space and Public Park Impact Fee in an amount not to exceed \$1.50/square foot, which shall be collected on all new development located both north of the 405 freeway and west of Fairview Drive, to be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City, upon the advice and recommendation of a newly created citizen committee called the Open Space & Recreation Advisory Committee.

This Measure is intended to comprehensively regulate the same subject as the Initiative – the General Plan, Specific Plan(s), Overlay Plan(s) and applicable provisions of the Municipal Code. If a majority of voters approve both the Initiative and the Costa Mesa Measure for Sensible Community Development and Development Funded Open Space and Recreation, the ballot measure with the higher percentage of the vote will control.

Therefore, if both measures are approved and the Costa Mesa Measure for Sensible Community Development and Development Funded Open Space and Recreation receives a higher percentage of the vote than the Initiative, none of the changes or additions proposed by the Initiative will be implemented.

SECTION 3. Ratification of General Plan

By this Measure, the People of the City of Costa Mesa hereby ratify the existing General Plan, as approved by the City Council on June 21, 2016. The existing text of the General Plan is attached hereto as Exhibit A and incorporated herein by reference.

The City's General Plan, as approved by the City Council on June 21, 2016 specifically designates not less than 25% or approximately 25.6 of 102 total acres at Fairview Developmental Center shall be zoned as either passive or recreational open space; any change to this requirement shall require a vote of the people.

SECTION 4. Ratification of Zoning Code, Specific Plan(s), and Overlay Plan(s)

By this Measure, the People of the City of Costa Mesa hereby ratify the City's existing zoning and related land use provisions. This would include the City Council's recently approved 2015-2035 General Plan, adopted on June 21, 2016. It would also include the following (including any subsequent amendments): the Baker Street and Paularino Avenue Specific Plan (SP-78-02); the Placentia/Hamilton/Pomona/19th Specific Plan (SP-79-01); the Bristol Street Specific Plan (SP-82-01); the East 17th Street Specific Plan (SP-84-01); the Harbor/Bernard/Parsons/Ford Specific Plan (SP-84-02); the North Costa Mesa Specific Plan (SP-94-01); the Avocado Street Specific Plan (SP 86-01); the Newport Boulevard Specific Plan (SP-96-01); the Costa Mesa Theater & Arts District Plan (SP-03-01); the SoBECA Urban Plan (SP-05-06); the 19 West Urban Plan (SP-05-07); the Mesa West Bluffs Urban Plan (SP-05-08); the Mesa West Residential Ownership Urban Plan (SP-05-09); and Title 13 of the Costa Mesa Municipal Code (Planning, Zoning and Development.) The existing text of the Zoning Code, Specific Plan(s) and Overlay Plan(s) are attached hereto as Exhibit B and incorporated herein by reference.

SECTION 5. Establishment of Open Space and Public Park Impact Fee and Open Space & Recreation Advisory Committee.

By this Measure, the People of the City of Costa Mesa hereby add Article 4, to Chapter XII of Title 13 to the City's Municipal Code for the purpose of establishing a new open space and public park impact fee (the "Open Space and Public Park Impact Fee" or "Fee"). The Fee shall be applicable to all new development located both north of the 405 freeway and west of Fairview Drive. The Open Space and Public Park Impact Fee shall be due upon issuance of a certificate of occupancy. The Open Space and Public Park Impact Fee is established to offset the impact of development upon recreational opportunities and shall be used by the City for the purpose of increasing active recreation, open space and public park facilities within the City, which uses may include,

but would not be limited to, the maintenance and development of Fairview Developmental Center upon its anticipated closure.

The amount of the Open Space and Public Park Impact Fee shall be the maximum amount permissible pursuant to the Mitigation Fee Act, and shall be established pursuant thereto; provided, however, in no event shall the Fee exceed \$1.50/square foot of new development.

A citizen committee is hereby created, and shall be known as the open space & recreation advisory committee (the "Open Space & Recreation Advisory Committee" or "Committee"), whose role shall be to advise the City Council on expenditures of the Open Space and Public Park Impact Fee. The Open Space and Public Park Impact Fee shall be only spent after receiving the advice and recommendation of the Committee.

The Open Space & Recreation Advisory Committee shall consist of seven (7) members of the public who are appointed by the City Council. The seven (7) members shall consist of: the Mayor, one (1) City Councilmember chosen by a majority of the City Council, one (1) representative of a Costa Mesa youth football organization chosen by a majority of the City Council, one (1) representative of a Costa Mesa youth baseball organization chosen by a majority of the City Council, one (1) representative of a Costa Mesa youth soccer organization chosen by a majority of the City Council, one (1) representative of the Newport Mesa Unified School District ("NMUSD") chosen by a majority vote of the NMUSD trustees, and one (1) member from a properly formed and actively operating California corporation whose primary focus is issues of environmental concern chosen by a majority of the City Council. The members shall be appointed at a time and place pursuant to Council policy. The Committee shall comply with the Brown Act and the Fair Political Practices Act, including but not limited to all disclosures required therein. City Staff shall provide the necessary support for the Committee's meetings and other official business. The City Council shall budget an appropriate amount of funds collected from the Open Space & Public Park Impact Fee for the Committee's activities, recognizing that interfund transfers may be necessary at the beginning of the Committee's formation before sufficient Open Space and Public Park Impact Fees have been collected. The Open Space & Recreation Advisory Committee shall sunset, and unless renewed by the City Council cease to exist, upon making its final recommendations to the City Council for active and passive recreational uses at Fairview Developmental Center, or 5 years after the effective date of this Measure, whichever shall first occur.

SECTION 6. Rejection of Initiative to Require Voter Approval of Certain Development Projects

By this measure, the People of the City of Costa Mesa hereby reject each and every change and addition to the Municipal Code proposed by the Initiative.

SECTION 7. Future Changes

Except as otherwise provided herein, any future changes or amendments to this ordinance, if approved, including any future changes or amendments to the General Plan, Specific Plan(s), Overlay Plan(s), or Municipal Code provisions affected by the Measure, may occur in the manner set forth in State law and the City's Municipal Code, and shall not require a vote of the people.

SECTION 8. Severability

If any section, subsection, sentence, clause, or phrase 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 of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 9. Effective Date

This ordinance shall take effect according to law ten days after certification of the election at which it is adopted.

Exhibit A to ORDINANCE NO. 2016-07

[Full Text of General Plan, As Adopted on June 21, 2016]

A full copy of the ordinance including attachments, is available for review on-line and in the City Clerk's office.

Exhibit B to ORDINANCE NO. 2016-07

[Full Text of Zoning Code, Specific Plan(s) and Overlay Plan(s)]

A full copy of the ordinance including attachments, is available for review on-line and in the City Clerk's office.