

1 February 2015 that will form the basis for the adoption of mitigation fees; and

2
3 **WHEREAS**, the boundaries for affected property are contained within the boundaries of
4 the Hub City Centre Specific Plan Area (“SP Area”); and

5
6 **WHEREAS**, adoption of the mitigation fees that are analyzed and justified by the Nexus
7 Report require implementing provisions to comply with the WVHCP and assist the City, property
8 owners and developers to coordinate proposed development within the SP Area; and

9
10 **WHEREAS**, the City Council wishes to adopt such implementing measures by adding
11 Chapter 3.34 to Title 3 of the Colton Municipal Code.

12
13 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF COLTON:**

14 **SECTION 1. Recitals.** The City Council hereby finds that the above recitals are true and
15 correct and are incorporated herein as support for the ordinance.

16
17 **SECTION 2.** The City Council of the City of Colton hereby adds Chapter 3.46 to Title 3
18 of the Colton Municipal Code to read as follows:

19 **“WEST VALLEY HABITAT CONSERVATION PLAN MITIGATION FEE PROGRAM**

20 **Sections:**

- 21 **3.46.010 Purpose.**
22 **3.46.020 Short Title.**
23 **3.46.030 Administrative responsibility.**
24 **3.46.040 Definitions.**
25 **3.46.050 Mitigation Fee Policies.**
26 **3.46.060 Imposition of Mitigation Fee.**
27 **3.46.070 Payment of Mitigation Fee.**
28 **3.46.080 Collection, Accounting and Disbursement of Mitigation Fees.**
3.46.090 Mitigation Fee Credit.
3.46.100 Reimbursement.
3.46.110 Deferrals, Waivers and Reductions.
3.46.120 Exemptions.

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3.46.010 Purpose.

The purpose of this chapter is to authorize and implement a local mitigation fee program for the area encompassed by the boundaries of the Hub City Centre Specific Plan to implement the West Valley Habitat Conservation Plan (WVHCP). The Mitigation Fees authorized by this chapter will assist in the acquisition and improvement of land to implement the requirements of the WVHCP, protect sensitive habitat, area, protect covered species that benefit from the lands located within the boundaries of the specific plan and encourage development on authorized parcels. Such activities benefit the public health, safety and welfare of all residents of Colton by providing a streamlined regulatory process that allows development to proceed, increase economic development opportunities, provide permanent open space and protect sensitive land and species.

3.46.020 Short Title.

The program authorized by this chapter shall be known as the “West Valley Habitat Conservation Plan Mitigation Fee Program.”

3.46.030 Administrative responsibility.

The Development Services Director of the City of Colton shall be responsible for the administration of this chapter. Detailed administrative procedures concerning the implementation of this chapter may be established by resolution of the City Council.

3.46.040 Definitions.

As used in this chapter, the following terms shall have the following meanings:

- A. “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.
- B. “City” means the city of Colton, California.
- C. “City council” means the city council of the city of Colton, California.

1 D. "Conservation commission" means the governing body established pursuant to the
2 WVHCP that is delegated the authority to oversee and implement the provisions of the WVHCP.

3 E. "Conservation" means all the actions necessary for the permanent protection of species
4 natural communities and habitat land as required by the WVHCP including land acquisition, land
5 management, biological monitoring, law enforcement and administration.
6

7 F. "Conservation areas" has the same meaning and intent as such term is defined and utilized
8 in the WVHCP.

9 G. "Credit" means a credit allowed pursuant to Section this chapter, which may be applied
10 against the mitigation fee paid.
11

12 H. "Fee" means the local development mitigation fee adopted pursuant to the Mitigation Fee
13 Act, Government. Code, Section 66000 et seq.

14 I. "Final inspection" means a final inspection of a project as defined by the building codes of
15 the city.
16

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

20 K. "Local development mitigation fee," "mitigation fee" or "fee" means the development
21 impact fee imposed pursuant to the provisions of this chapter.
22

23 L. "West Valley Habitat Conservation Plan" or "WVHCP" means the West Valley Habitat
24 Conservation Plan, adopted by the city council on February 3, 2015.

25 M. "Project area" means the area, measured in acres, from the adjacent road right-of-way line
26 to the limits of project improvements. Project area includes all project improvements and areas that are
27 disturbed as a result of the project improvements on an owner's gross acreage, including all areas depicted
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1 on the forms required to be submitted to the city pursuant to this chapter and/or other applicable
2 development ordinance or regulation of the city. Except as otherwise provided herein, the project area is
3 the area upon which the project will be assessed the mitigation fee authorized by this chapter.

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

8 O. "Revenue" or "revenues" means any funds received by the city pursuant to the provisions
9 of this chapter for the purpose of defraying all or a portion of the cost of acquiring and preserving habitat
10 land and open space areas within the city and the region which are known to support threatened,
11 endangered or key sensitive populations as described in the West Valley Habitat Conservation Plan.

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13 **3.46.050 Mitigation Fee Policies.**

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15 To assist in providing revenue to acquire and conserve lands necessary to implement the WWHCP,
16 a mitigation fee shall be paid for each acre of residential, commercial or office development or portion
17 thereof to be constructed upon within the boundaries of the Hub City Centre Specific Plan boundaries, and
18 that is identified as "developable."

19 The mitigation fees shall be established by separate resolution of the City Council and may be
20 amended from time to time in accordance with the adoption procedures established by state law. The
21 amount of the mitigation fee for a residential, commercial or office development project required to be
22 paid shall be based on the acreage to be disturbed by development (i.e. grading and/or construction) and
23 shall be calculated on the basis of the project area, in accordance with the following:

24
25 A. The project area shall be determined by city staff based on the subdivision map, plot plan,
26 and other information submitted to or required by the city.

1 B. An applicant may elect, at his or her own expense, to have a project area dimensioned,
2 calculated, and certified by a registered civil engineer or licensed land surveyor. The engineer or land
3 surveyor shall prepare a wet-stamped letter of certification of the project area dimensions and a plot plan
4 exhibit thereto that clearly delineates the project area. Upon receipt of the letter of certification and plot
5 plan exhibit, the city shall review the submitted documents. If the project area dimensions, the letter of
6 certificate and the plot plan are acceptable to the city, the city shall calculate the mitigation fee required to
7 be paid based on the certified project area. If the project area dimensions, the letter of certification, or the
8 plot plan are not acceptable to the city, the applicant shall perform such actions as directed by the city in
9 order to resolve any deficiencies perceived by the city.

10 C. Where construction or other improvements on project area are prohibited due to legal
11 restrictions on the project area, such as Federal Emergency Management Agency designated floodways or
12 areas legally required to remain in their natural state, that portion of the project area so restricted shall be
13 excluded for the purpose of calculating the mitigation fee.

14
15 **3.46.060 Imposition of Mitigation Fee.**

16 Notwithstanding any other provision to the contrary in the city's municipal code or a non-
17 codified ordinance, no permit shall be issued a permit for any residential or commercial/office
18 project within the boundaries of the Hub City Centre Specific Plan, except upon the condition that
19 the mitigation fee applicable to such project has been paid in accordance with the provisions of
20 this chapter.

21
22 **3.46.070 Payment of Mitigation Fee.**

23 A. The mitigation fee shall be paid in full at the time of the issuance of a grading permit for
24 the project, or other permit which allows for ground/soils disturbance, whichever occurs first.

25
26 B. In no event shall a final inspection be made or a certificate of occupancy be issued prior to
27 full payment of the fee.

1 C. The fee shall be assessed one time per lot or parcel, except in cases of phased
2 construction. In such cases, each grading permit shall require the payment of mitigation fees. No refunds
3 shall be provided for changes in land use to a lower fee category. It shall be the responsibility of the
4 applicant to provide documentation of any previously paid fee.

5 D. The mitigation fee required to be paid under this chapter shall be the fee in effect at the
6 time of payment.

7 E. There shall be no deferment of the fee beyond final inspection or issuance of certificate(s)
8 of occupancy.

9 F. Notwithstanding anything in the city's municipal code, or any other written
10 documentation to the contrary, the mitigation fee shall be paid whether or not the project is subject to
11 conditions of approval by the city imposing the requirement to pay the fee.

12 G. If all or part of the project is sold prior to payment of the local development mitigation
13 fee, the project shall continue to be subject to the requirement to pay the fee as provided herein.

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16 **3.46.080 Collection, Accounting and Disbursement of Mitigation Fees.**

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18 The mitigation fees collected pursuant to this chapter shall be placed in a separate fund, each of
19 which may be further segregated by specific projects. The fund, and interest earned thereon, shall be
20 expended solely for the acquisition of the habitat land identified in the WWHCP, reimbursement for the
21 acquisition of those lands, or for transmittal to the designated management entity, Riverside Land
22 Conservancy (RLC), to fund restoration and long-term stewardship costs identified in the WWHCP,
23 Conservation Easements and Memorandum of Understanding with RLC..

24 **3.46.090 Mitigation Fee Credit.**

25
26 A. The owner of a parcel of property otherwise required to pay a fee pursuant
27 to this chapter may receive a credit for the corresponding mitigation fee when that owner donates
28 land identified as suitable for habitat, as identified in the WWHCP. The mitigation fee credit shall

1 offset, on a proportionate basis without interest, the corresponding mitigation fee to be paid
2 pursuant to this Chapter.

3 B. The amount of the mitigation fee credit shall equal the City's most recent
4 estimated cost of acquisition.

5
6 C. To the extent that an owner is granted a mitigation fee credit, such owner
7 shall not be entitled to a future reimbursement for such land donation except as provided in this
8 chapter.

9
10 D. A development fee credit is an obligation of the city that runs with the land
11 and inures to the benefit of each successor in interest of the original landowner until full credit
12 has been received.

13 **3.46.100 Reimbursement.**

14 A. The owner of a parcel of property otherwise required to pay a mitigation
15 pursuant to this chapter will be entitled to enter into a reimbursement agreement to reimburse
16 from subsequently collected mitigation fees the direct and verifiable costs of land donations in
17 excess of that required by their project where all of the following conditions are satisfied:
18

19 1. The owner has donated land that is identified as suitable for habitat
20 land in the WVHCP.

21 2. The land, or portion thereof, has been dedicated to the public.

22 3. Use of the land, or portion thereof, is in compliance with all
23 applicable laws and adopted plans.
24

25 B. The City shall not reimburse the owner for costs related to financing any
26 land donation.
27

1 C. An owner shall only be entitled to reimbursement to the extent that any
2 land donation benefits property not within the owner's project. Thus, an owner may receive a
3 mitigation fee credit as provided in this chapter for property that serves the owner's project and
4 reimbursement for the additional land donation that benefits subsequently developed property.

5 D. In no event shall an owner receive a mitigation fee credit and/or
6 reimbursement in excess of the city's most recent estimated cost of acquiring the land.

7 E. Any reimbursement agreement entered into under this Section shall require
8 the city, for a period of up to fifteen years, to reimburse the owner from the proceeds of the
9 mitigation fees collected from new projects that directly benefit from the land donated that is the
10 subject of the reimbursement agreement. The terms of the reimbursement shall be set forth in the
11 reimbursement agreement. The terms of the reimbursement shall be set forth in the
12 reimbursement agreement.

13 **3.46.110 Deferrals, Waivers and Reductions.**

14 The City Council is empowered to grant deferral, waiver or reduction of any fee
15 imposed by this chapter upon request. Such deferral, waiver or reduction may only be granted if,
16 in the opinion of the City Council, properly supported by specific findings and evidence, that
17 deferral, waiver or reduction would allow a fairer financing arrangement to be imposed, or where
18 waiver or reduction is required because imposition of such mitigation fees in full would cause
19 inequities because prior mitigation lands have been donated. Findings must be based on written
20 and other evidence submitted by the property owner substantiating the owner's contention that the
21 fee should be deferred, waived or reduced.

22 Findings must include facts supporting deferral, waiver or reduction including,
23 without limitation, findings that in the case of deferral (1) other properties to be benefitted by any
24 fee will not be burdened by the review and delay in fee imposition, and (2) alternative financing
25 methods involving more than one owner have been proposed for review and will be approved
26 prior to the payment of the fees in question ,and (3) delay will result in a more fair funding
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1 arrangement; and, in the case of waiver or reduction the owner will receive insufficient or no
2 benefit from the fee imposed and would therefore be required, if the fee were imposed in full, to
3 pay more than their fair share for the benefit received.

4 **3.46.120 Exemptions.**

5 The following types of construction shall be exempt from the provisions of this chapter:

6
7 A. Existing improvements that are converted from an existing permitted use to a
8 different permitted use, provided that no additional area of the property is disturbed as a result of such
9 conversion.

10
11 B. Projects for which the city is restrained by law from collecting the fee due to a
12 development agreement or vested tentative map entered into with or issued by the city prior to the
13 effective date of this chapter.

14
15 C. Projects are exempt from paying the mitigation fee provided they meet the legal
16 requirements for vesting based upon lawfully issued permits and continuous construction.”

17 **SECTION 3.** Under State CEQA Guidelines, Section 15162, once a negative declaration
18 has been adopted for a project, no subsequent environmental document shall be prepared for that
19 project unless substantial changes are proposed in the project which would require major
20 revisions of the previous environmental document due to the involvement of new significant
21 environmental effects or if new information of substantial importance which shows that the
22 project will have a significant impact on the environment has been made available. The measures
23 adopted in this ordinance fall fully within the scope of the EA and Negative Declaration adopted
24 for the WVHCP. Therefore, the staff recommends that the City Council find that adoption of this
25 ordinance meets the criteria of State CEQA Guidelines section 15162 and that no new
26 environmental documentation or other further environmental review is required

27 **SECTION 4:** If any provision or clause of this Ordinance or any application of it to any
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1 person, firm, organization, partnership or corporation is held invalid, such invalidity shall not
2 affect other provisions of this Ordinance which can be given effect without the invalid provision
3 or application. To this end, the provisions of this Ordinance are declared to be severable.

4 **SECTION 5. Effective Date.** This Ordinance shall become effective thirty (30) days
5 after its adoption.

6 **PASSED, APPROVED AND ADOPTED** this 2nd day of June, 2015.

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Richard A. DeLaRosa
Mayor

11 ATTEST:

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15 Carolina R. Padilla
16 City Clerk

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF COLTON)

4 CERTIFICATION

5 I, **CAROLINA R. PADILLA**, City Clerk of the City of Colton, California, do hereby
6 certify under penalty of perjury that the foregoing is a full, true and correct copy of
7 **ORDINANCE NO. O-07-15**, and was duly passed, approved, and adopted by the City
8 Council of the City of Colton at its Regular Meeting held on the **2nd day of June, 2015**,
9 by the following vote to wit:

10
11 AYES: COUNCILMEMBER Toro, Jorrin, Navarro, González,
12 Bennett, Suchil and Mayor
DeLaRosa
13 NOES: COUNCILMEMBER None
14 ABSTAIN: COUNCILMEMBER None
15 ABSENT: COUNCILMEMBER None
16

17 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official
18 seal of the City of Colton, California, this ____ day of _____, _____.

19
20
21
22 _____
23 CAROLINA R. PADILLA
City Clerk
City of Colton, California
24

25 (SEAL)
26
27
28