

ORDINANCE NO. 2046

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 17.15 “PROPERTY DEVELOPMENTS” OF TITLE 17 “DEVELOPMENT” TO ADD SECTION 17.15.360 (“PATRICK HENRY DRIVE SPECIFIC PLAN INFRASTRUCTURE IMPACT FEE”) TO ESTABLISH A DEVELOPMENT IMPACT FEE FOR THE PATRICK HENRY DRIVE SPECIFIC PLAN AREA

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on March 22, 2022, the City Council adopted the Patrick Henry Drive Specific Plan (the “Project”), a specific plan for a high-density mixed-use community of up to 12,000 residential units with supportive retail uses, located on approximately 74 acres of land bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west that are currently developed with industrial uses;

WHEREAS, on March 22, 2022, the City Council adopted and certified the Environmental Impact Report (“EIR”) for the Project (SCH #2019120515), as well as a set of CEQA Findings and a Statement of Overriding Considerations, in accordance with the requirements of CEQA;

WHEREAS, the Project and EIR specified that certain improvements to public facilities are necessary to support the Project and include sanitary sewer facility upgrades, potable water facility upgrades, non-potable water facility upgrades, storm water facility upgrades, public and private street improvements and expansions, traffic signal installations, traffic safety device installations, traffic signal mitigations, fair-share traffic payments, emergency response vehicle and tiller aerial ladder apparatus purchases, entry monument and signs, and formation of a transportation management association;

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WHEREAS, in 2021, the Project Consultant, MIG, contracted with Economic & Planning Systems, Inc. (EPS Consultants), to prepare a nexus study to justify the creation of an infrastructure impact fee (“Infrastructure Impact Fee”) to apply to new residential and office development within the Project area;

WHEREAS, the intent of the of the Infrastructure Impact Fee is to create an equitable distribution of area-wide and common infrastructure costs for all new residential and office development within the Project area;

WHEREAS, the Department of Public Works has prepared a report entitled “Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study” (the “Study”), which provides the purpose, nexus, improvements, cost estimates, and justification for the creation of an Infrastructure Impact Fee, and is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by this reference;

WHEREAS, the Study proposes that the fee applies to new residential and office uses within the Project area; and,

WHEREAS, the Study recommends fee levels be adjusted annually to keep up with construction costs and inflation.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA

AS FOLLOWS:

SECTION 1: Intent and Purpose. The City Council of the City of Santa Clara does hereby find and declare:

(a) The City, pursuant to the home rule provisions of Article 11, Section 5, of the California Constitution, may make and enforce all ordinances and regulations with respect to municipal affairs.

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(b) The City, pursuant to Article 11, Section 7, of the California Constitution, may make and enforce all local ordinances not in conflict with general laws.

(c) The purpose of this section is to implement the necessary improvements required to support the completion of the proposed development within the Patrick Henry Drive Specific Plan which was adopted by the City Council on March 22, 2022.

(d) The Patrick Henry Drive Specific Plan identified that certain improvements are necessary to support completion of the Specific Plan. These improvements include sanitary sewer facility upgrades, potable water facility upgrades, non-potable water facility upgrades, storm water facility upgrades, public and private street improvements and expansions, traffic signal installations, traffic safety device installations, traffic signal mitigations, fair-share traffic payments, emergency response vehicle and tiller aerial ladder apparatus purchases, entry monument and signs, and formation of a transportation management association.

(e) In order to provide equitable distribution of costs to complete such improvements, the intent of this fee is to distribute costs to new residential and office development within the Patrick Henry Drive Specific Plan area.

SECTION 2: That a new section 17.15.360 (entitled “Patrick Henry Drive Specific Plan Infrastructure Impact Fee” is hereby added to Title 17 (entitled “Development”) of “The Code of the City of Santa Clara, California” (“SCCC”) to read as follows:

“Section 17.15.360 Patrick Henry Drive Specific Plan Infrastructure Impact Fee”

(a) Definitions. When used in this section, the following words and phrases will be defined as set forth below. When examples are given, they are illustrative only, and they are not intended to be an exhaustive itemization of all potentially includable items.

(1) "Building" means any structure used or intended for supporting or sheltering any use or occupancy.

(2) "Building permit" means the permit issued or required for the construction or improvement of any structure in connection with the development of land pursuant to the California Building Code.

(3) "Costs" means amounts spent or authorized to be spent in connection with the planning, financing, acquisition and completion of the improvements identified in the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study including, without limitation, the costs of land, construction, engineering, administration, financing costs, legal and financial consulting fees, and incidental expenses.

(4) "Multifamily Residential Use" means a building or portion thereof used and designed as a residence for two or more families living independently of each other, including apartment houses, apartment hotels, and flats, but not including automobile courts, motels, hotels, or boarding houses. Each unit in the structure is separated from other units by one or more common, fire-resistant walls.

(5) "Office/R&D use," in general, means any structure or portion thereof intended for occupancy by a business entity which will primarily provide clerical, professional or business services, and/or research and development activities for the business itself, or which will primarily provide clerical, professional or business services, and/or research and development activities to the public or other business entities. The structure or portion thereof may also include light fabrication areas in the manner of conducting business.

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(6) "Person" means any individual, domestic stock company, partnership of any kind, joint venture, club, business or common law trust, society, legal entity, or any other manner of owning property or conducting business.

(7) "Patrick Henry Drive Specific Plan Area" refers to the approximately 74 acres of land within the City of Santa Clara generally bounded by Mission College to the south, Great America Parkway to the east, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west.

(8) "Patrick Henry Drive Specific Plan Area Infrastructure Impact Fee Schedule" refers to the document, as amended from time to time, on file in the City's Public Works Department used to determine applicability of the fees to particular land uses. If a proposed building use, or use within a portion of the building, does not fall under a use listed in such schedule, but, in the Director of Public Works or City Engineer's opinion, closely corresponds to a use listed in such schedule, the Infrastructure Impact fees will be imposed.

(b) Imposition of Patrick Henry Drive Specific Plan Infrastructure Impact Fees.

(1) Imposition of Fee. The Patrick Henry Drive Specific Plan Infrastructure Impact Fee is hereby imposed upon every person (person having equitable or legal title, or other interest as owner, lessee, or otherwise) who causes the development of new Multifamily Residential Use Buildings or Office Buildings within the Patrick Henry Drive Specific Plan area, as each is defined herein, on or after June 4, 2022.

(2) Exceptions. There are no exceptions for the payment of the Patrick Henry Drive Specific Plan Infrastructure Impact Fee.

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(3) Amount of Fee. The amount of the Patrick Henry Drive Specific Plan Infrastructure Impact Fee shall be established by resolution of the City Council.

(4) Fee Adjustments and Escalation.

(A) Periodic Adjustments to Patrick Henry Drive Specific Plan Infrastructure Impact Fee. The Patrick Henry Drive Specific Plan Infrastructure Impact Fee shall be adjusted periodically to reflect the current status of cost and scope of the improvements identified in the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study. The Director of Public Works or City Engineer shall make a periodic review of the improvements within the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study and make recommendations for amendment, if any, in a report to the City Council. After receiving such report and making it available for public distribution and review, the City Council shall give notice and, no less than ten days after public notice has been given, conduct a public hearing in which it shall consider these reports, receive testimony and information from any interested members of the public, and receive such other evidence as it may deem necessary. At the conclusion of that hearing, the City Council shall determine what changes, if any, are to be made to the Patrick Henry Drive Specific Plan Infrastructure Impact Fee.

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(B) Annual Adjustments for Inflation. Unless otherwise modified by the City Council, Patrick Henry Drive Specific Plan Infrastructure Impact Fees will automatically adjust for inflation annually at the start of each fiscal year, using the latest Construction Cost Index for San Francisco, published by Engineering News Record (ENR). If this index ceases to exist, the Director of Public Works shall substitute another construction cost index, which in his or her judgment is as nearly equivalent to the original index as possible. The automatic fee adjustment will occur when the City conducts its annual update of the municipal fee schedule unless it is otherwise modified by the City Council during its approval of the municipal fee schedule.

(5) Time of Payment of Fee. Any Infrastructure Impact Fees imposed under this section shall be due and payable prior to issuance of any building permit for a Multifamily Residential Use or Office Use project.

(6) Use of the Proceeds from the Patrick Henry Drive Specific Plan Infrastructure Impact Fee. The sums derived from the collection of the Patrick Henry Drive Specific Plan Infrastructure Impact Fee, and any interest thereon, shall be held by the City's Director of Finance and shall be distributed according to the fiscal and budgetary policies of the City. Such funds are to be used for the projects identified in the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, as amended from time to time. In no case shall any of the moneys be used for maintenance.

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(7) Provisions of Section Are Not Exclusive. The provisions of this section are intended to establish an alternative method for spreading the costs of certain public improvements against the land that will be primarily benefited thereby; the provisions of this section shall not be construed to limit the powers of the City Council to utilize any other method for accomplishing this purpose. This shall be in addition to any other requirements which the City Council is authorized to impose as a condition to approving development pursuant to State and local law.

(8) Developer Construction of Facilities. Patrick Henry Drive Specific Plan Infrastructure Impact Fees are the minimum to be paid by new residential or office development. Patrick Henry Drive Specific Plan Infrastructure Impact Fees are to be initially paid in all circumstances. However, if because of special conditions caused by a particular new development, a development is required (pursuant to SCCC 17.15.090 and/or 17.15.310) to construct the improvements included within the Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study, the development will be reimbursed for such construction costs as determined by the Director of Public Works or City Engineer and based on the availability of fees paid to the City. To be entitled to such reimbursement, the new development must prove its claimed construction costs to the satisfaction of the Director of Public Works or City Engineer, or designee.

(9) Appeal from Decisions of City Staff. An appeal from a City staff decision shall be made within seven calendar days of the decision to the City Council. Written application for the appeal shall be filed with the City Clerk's office. The application shall state the factual basis of the appeal. The City Council will hear the appeal application at a public hearing to be conducted within thirty (30) calendar days of filing of the application. The decision of the City Council shall be final.

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

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SECTION 6: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 22nd day of March, 2022, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Patrick Henry Drive Specific Plan Infrastructure Impact Fee Nexus Study

The Economics of Land Use



Final Report

Patrick Henry Drive Specific Plan Area Infrastructure Impact Fee Nexus Study

Prepared for:

City of Santa Clara

Prepared by:

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March 2022

EPS #171093

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1. INTRODUCTION AND FEE OVERVIEW

Introduction

This Nexus Report provides analysis and technical documentation to support the adoption of a development impact fee program for the Patrick Henry Drive Specific Plan (PHDSP) area (Plan Area) in the City of Santa Clara (City). Development impact fees are one-time charges on new development collected and used by the City to cover the cost of capital facilities and improvements required to serve real estate development. The PHDSP Area Infrastructure Impact Fee would be applicable to future development in the PHDSP only and will not replace or exempt development from other City-wide impact fees.

This Nexus Report has been prepared by Economic & Planning Systems, Inc. (EPS), with direction and input from City staff. It provides a legal basis for requiring payment of a PHDSP area-wide development impact fee consistent with Mitigation Fee Act (AB 1600/ Government Code Section 66000 et seq.) and subsequent related legislation. The PHDSP Area Infrastructure Impact Fee Program must be approved by the City Council and will be effective 60 days following the City's final action on the ordinance authorizing collection of the fee.

The PHDSP, to be adopted by the Santa Clara City Council before the approval of the PHDSP Infrastructure Area Impact Fee, provides the land use and regulatory framework for the development of a high-density, mixed-use neighborhood. This PHDSP Area Infrastructure Impact Fee is based on the land use program and level of service standards/requirements described in the PHDSP (and supporting environmental documents) as well as current estimates of the infrastructure and improvement costs needed to accommodate these land uses and standards.

Legal Context

This Nexus Study is designed to provide the necessary technical analysis to support a PHDSP Area Infrastructure Impact Fee to be established by a City Ordinance and Resolution. The Mitigation Fee Act allows the City to adopt, by resolution, the PHDSP Area Infrastructure Impact Fee consistent with the supporting technical analysis and findings provided in this Nexus Report. The Resolution approach to setting the fee allows periodic adjustments of the fee amount that may be necessary over time, without amending the enabling ordinance.

Impact fee revenue are used to cover the cost of constructing capital and infrastructure improvements required to serve new development and growth in the City. As such, impact fees must be based on a reasonable nexus, or connection, between new development and the need for specific capital facilities and improvements. Impact fee revenue cannot be used to cover the operation and maintenance costs of these or any other facilities and infrastructure. In addition, impact fee revenue cannot be collected or used to cover the cost of pre-existing infrastructure needs or deficiencies.

In establishing, increasing, or imposing a fee as a condition for the approval of a development project, Government Code 66001(a) and (b) state that the local agency must:

1. Identify the purpose of the fee;
2. Identify how the fee is to be used;
3. Determine how a reasonable relationship exists between the fee use and type of development project for which the fee is being used;
4. Determine how the need for the public facility relates to the type of development project for which the fee is imposed; and
5. Show the relationship between the amount of the fee and the cost of the public facility.

In September 2021, the State of California adopted Assembly Bill (AB) 602, which includes several new requirements related to the development and implementation of impact fee programs. The key provisions related to the calculations documented in this Nexus Report are summarized below.

- **Capital Improvement Plan:** AB 602 requires that jurisdictions adopt a capital improvement plan as part of the nexus study process. This adoption can occur at the same time as the fee ordinance adoption. Accordingly, this Nexus Report relies on a PHDSP Area Long-Term Capital Improvement Plan to be approved by the City Council in conjunction with the PHDSP Area Infrastructure Impact Fee Program.
- **Explanation of Level of Service and Fee Increase:** AB 602 requires that the nexus study provide explanations if the fee calculation is based on a change in existing levels of service. Since the PHDSP Area Infrastructure Impact Fee will be new to the City and only apply to a defined area, existing or city-wide service standards are not used as a basis for the fee calculation. This Nexus Report is based on service standards that have been developed for, and are unique to, the PHDSP area, as documented in the Plan and referenced as appropriate in this document.

All State statutory requirements have been followed in establishing this PHDSP Area Infrastructure Impact Fee, as documented in subsequent chapters. **Chapter 3** summarizes the specific findings that explain or demonstrate this nexus.

If the PHDSP Area Infrastructure Impact Fee is adopted, this Nexus Report and the technical information it contains should be maintained and reviewed periodically by the City to ensure Impact Fee accuracy and to enable the adequate programming of funding sources. To the extent that infrastructure requirements, costs, and development potential changes over time, the PHDSP Infrastructure Impact Fee Program (Fee Program) will need to be updated. Further information on the implementation and administration of the Fee program is provided in **Chapter 4**.

PHDSP Area Infrastructure Impact Fee

Table 1 shows the PHDSP Area Infrastructure Impact Fee supported by the nexus findings and analysis contained in this Nexus Report. As currently calculated, the fee would be applied to all new multifamily residential and office development projects within the PHDSP area (retail uses will be exempt and PHDSP does not include single-family development). The PHDSP Area Infrastructure Impact Fee Program will be independent and separate from all other City, Santa Clara County, other agency, or regional development impact fees that may also be applicable to the PHDSP development.

Table 1 Proposed PHDSP Area Infrastructure Impact Fee (FY\$21-22)

Use	Measure	Fee ¹
Multi-family Residential ²	per Unit	\$9,626
Office	per Square Foot	\$21

[1] Fee is set to cover full costs of required PHDSP infrastructure facilities and includes a two (2) percent administrative fee to cover City costs of reporting, managing, and updating fee program.

[2] Single family residential use is not permitted in the PHDSP area.

Source: BKF; City of Santa Clara; Hexagon Transportation Consultants; Economic & Planning Systems, Inc.

The calculated PHDSP Area Infrastructure Impact Fee amounts of \$9,626 per multifamily residential unit and \$21.00 per office square foot includes a program administration fee equal to 2 percent of the program costs, consistent with other Mitigation Fee Act program administrative costs in many other California jurisdictions.¹ It covers the cost of infrastructure needed to serve build-out of the Plan Area, as specified in more detail in Appendix A for the PHDSP Area Long-Term Capital Improvement Plan. In particular, the PHDSP Area Infrastructure Impact Fee covers the following infrastructure items:

- On-Site and Off-Site Roadway Facilities (i.e., traffic signals, traffic safety devices, pavement).
- Sanitary Sewer Facilities and associated structures.
- Potable Water Facilities.
- Monuments and Signage.
- Formation of a Transportation Management Association.
- Non-potable Water Facilities (i.e., Recycled Water).
- Storm Drainage Facilities.
- Emergency Response Apparatus/Equipment.
- All land right of way acquisition costs needed to support on-site public infrastructure.

¹ The 2 percent administration cost is designed to cover expenses for preparing subsequent updates to the impact fee technical report as well as the required reporting, auditing, collection and other annual administrative costs involved in overseeing the program. Development impact fee programs throughout California have applied similar administrative charges. The cost of preparing this Nexus Report has been paid directly by the developers in the Specific Plan area outside of this fee.

2. PHDSP LAND USE AND INFRASTRUCTURE ASSUMPTIONS

This chapter documents the land use growth projections and infrastructure improvement costs used to calculate the PHDSP Area Infrastructure Impact fee. The assumptions are based on information from the PHDSP and cost analysis developed by City of Santa Clara staff, with support from transportation and civil engineering consultant firms Hexagon and BKF, respectively.

Existing and Planned Development

The PHDSP covers an approximately 74-acre area in the City of Santa Clara bounded by Mission College to the south, Great America Parkway to the East, the Hetch-Hetchy right-of-way to the north, and Calabazas Creek to the west (see **Figure 1**). Before approval of the PHDSP, the area is primarily zoned as "Light Industrial" (or ML), which allows for manufacturing, processing, repair, and storage uses. Consistent with this zoning, existing uses include electrical supply stores and several office and warehouse buildings housing R&D labs and software training institutes. A nine-acre section of the Plan Area is currently zoned as "Planned Development" (PD). The existing street, utilities and related infrastructure is sufficient to accommodate this level of development.

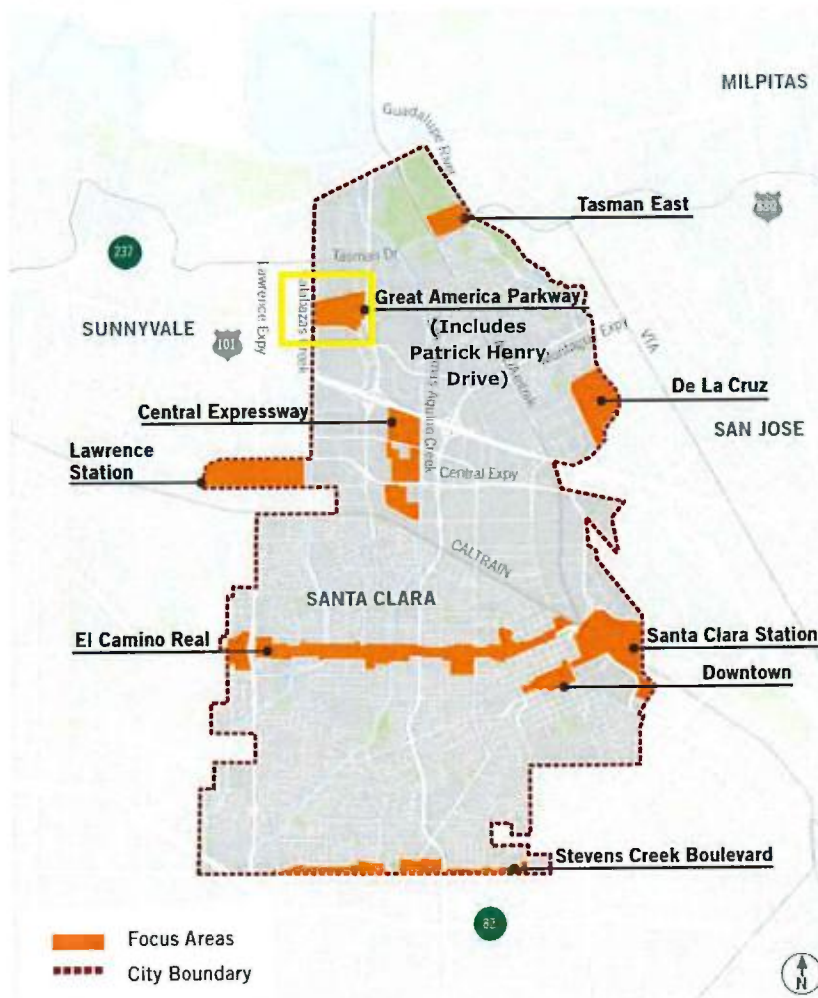
Figure 1 PHDSP Area Boundaries



Source: City of Santa Clara

With expected adoption in 2022, the PHDSP is designated by the City's 2010-2035 General Plan as one of nine Focus Areas in the City with potential to contribute to the City's Regional Housing Needs Allocation (RHNA) goals (see **Figure 2**). The PHDSP Plan Area provides an opportunity to develop higher-density residential homes supported by local amenities and accessible jobs, cultivating a vibrant and diverse mixed-use neighborhood.

Figure 2 City of Santa Clara Focus Areas



Source: City of Santa Clara