



City Council Agenda Item

City Council Meeting Date: December 3, 2019

TO: Mayor and Members of the City Council

FROM: Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Discussion and Direction re Reimbursement of Development Impact Fees Assessed Against Projects for Accessory Dwelling Units

Recommendation:

Staff recommends the City Council provide direction whether to reimburse three project applicants for payment of Development Impact Fees assessed against their projects that included accessory dwelling units (ADUs), each of less than 750 square feet.

Background/Discussion:

At its meeting of November 5, 2019, the City Council adopted Resolution No. 6277(19), which (i) adopted a pro-rating method for charging the City's Development Impact Fees to ADUs of 750 square feet or greater and (ii) directed no Development Impact Fees are to be assessed against ADUs of less than 750 square feet. That resolution became effective upon adoption. Both of those actions are in compliance with Chapter 653, a revision to the State Government Code, which will become effective on January 1, 2020.

At that same meeting, in closed session, the City Council approved reimbursing Diane Long the Development Impact Fees she paid for her less than 750-square foot project, in light of the new law and the claim she filed seeking reimbursement. The reimbursement will be subject to Ms. Long agreeing, in writing, to release any claims she may have against the City for having charged Development Impact Fees against her project. The amount being reimbursed is \$7,191.60.

At the same meeting, in open session, Council Member Starbuck requested, and the City Council concurred, an item to be placed on an upcoming agenda to consider reimbursing the other applicants who built ADUs of less than 750 square feet and paid Development Impact Fees. This agenda item provides the City Council the option to discuss that matter and provide direction it deems appropriate. The other ADUs were constructed at 306 S. B Street, 420 W. Cypress, and 713 E. Lemon. Each applicant paid Development Impact Fees of \$4,966.10, \$4,800.04 and \$4,774.40 for their respective ADUs. Notice was given to the three property owners of this agenda item.

The City Council was under no legal obligation to reimburse Ms. Long and is under no legal obligation to reimburse the other three applicants for ADUs of less than 750 square feet, as these fees were paid prior to the Council adoption of Resolution 6277(19) and prior to the new state law.

The City Council has not approved any reimbursement for fees Ms. Long has paid to the Lompoc Unified School District for her project, nor is the City required to do so.

Fiscal Impact:

Similar to the Development Impact Fees reimbursed to Ms. Long, the reimbursement of Development Impact Fees for the three additional ADUs would be expensed against the various Development Impact Fee Funds to which those fees were deposited. Also similar to the fees being reimbursed to Ms. Long, if additional fees are reimbursed, that could result in the City's General Fund having to cover costs that would otherwise have been paid for by those fees.

Conclusion:

Staff recommends the City Council review this staff report and provide direction it deems appropriate. If reimbursement is directed, then staff recommends the fees be reimbursed only if those applicants agree to release the City from all liability relating to the City's imposition of the fees.

Respectfully submitted,



Jeff Malawy, City Attorney