



City Council Agenda Item

City Council Meeting Date: December 20, 2022

TO: Dean Albro, City Manager

FROM: Christie Donnelly, Management Services Director
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SUBJECT: Annual Compliance Report for Development Impact Fees per Government Code Subdivision 66006(b)(1)

Recommendation:

Staff recommends the City Council receive this report prepared to satisfy Government Code subdivision 66006(b)(1).

Background:

The Mitigation Fee Act (Government Code sections 66000 *et seq.*) was enacted in 1987 and sets forth the standards against which monetary exactions on development projects are measured. In a paper titled "A Short Overview of Development Impact Fee" by Peter N. Brown, City Attorney, and Graham Lyons, Deputy City Attorney for the City of Carpinteria, for the League of California Cities in 2003, the following is stated:

With the passage of Proposition 13 in 1978 and the decline in local government revenues, local government increasingly relied on impact fees in order to mitigate the impacts created by new development. In response, developers lobbied the State Legislature to curtail the growing use of impact fees. In response, the Legislature passed AB 1600, the California Mitigation Fee Act, which...established a statewide procedure...for exacting certain fees from development projects.

On January 3, 1989, the City Council adopted Resolution No. 3795(89), establishing its first Mitigation Fee Act development fee for fire impacts. Subsequently, the City Council has adopted and updated various other development impact fees applicable to new development within the City. The purpose of development impact fees is to finance the design, construction and acquisition of facilities and equipment necessary to accommodate future development within the City.

Development impact fees that are collected are segregated and placed in special funds or accounts, which earn interest. Those funds are held in accordance with the Mitigation Fee Act to finance the construction of the facilities for which the fees are collected.

The Mitigation Fee Act requires periodic reporting annually and a separate reporting every five years until the funds collected are expended. The 2019 Staff Report included the requirements for both the annual and five year reporting requirements. As such, the next fiscal year in which both requirements are due would be for the fiscal year ending June 30, 2024. This year's report addresses annual reporting only to satisfy Government Code subdivision 66006(b)(1).

As of June 30, 2022, the City had 12 separate and distinct fees that can be collected, pursuant to the Mitigation Fee Act. Following is a summary listing of the fees, along with the balance for each fee account, as of June 30, 2022 (based on preliminary unaudited activity):

| <u>Fee Type and Description</u> | <u>Balance</u> |
|--|----------------|
| Police Facilities and Vehicles | \$ 112,559.10 |
| Park Land Acquisition | 649,775.01 |
| Fire Protection Facilities and Equipment | 84,410.24 |
| Park Improvements | 1,059,240.87 |
| Community & Recreation Center Facilities | 94,724.52 |
| Traffic Signals | 1,788,091.08 |
| Bikeways | 163,470.12 |
| Streets | 2,927,469.68 |
| Library Facilities and Materials | 277,861.90 |
| Impact Fee Study | 6,918.99 |
| Water Utility System | (6,891,244.61) |
| Wastewater Utility System | (7,771,351.33) |
| Refuse Container Costs | - |

The Water and the Wastewater Utility System fees identified above have negative balances. The negative balances are due to the cumulative assignment of a fixed percentage of existing debt to new development in excess of the actual fees collected. The 1998, 2005, 2007 bonds and State Revolving Fund loan were issued with an expectation a set proportion of the facility improvements constructed with the bond and loan funds would serve new development. As development is cyclical and bond payments are fixed, fluctuations are expected in the balances throughout the terms of the bonds and loans. However, as long as the projected growth occurs that was planned for at the time the bonds were incorporated into the Mitigation Fee Act plan, developer fees should pay for their share of the debt service costs over the term of the General Plan. At this point in time, the two fee balances are negative. Those negative balances indicate there has been less development than anticipated, on a pro rata basis, in the currently

approved Mitigation Fee Act study to date, to support the use of the fees for payment of a portion of the debt service outstanding. With the refunding of the 1998, 2005, and 2007 bonds in the spring of 2018, the amount of current and future debt service attributable to new development has been adjusted although the fixed percentage of the debt service payments assigned to new development did not change. However, as the refunding occurred after the second semi-annual debt service payments in March 2018, the change due to the refunding, was first recognized with the 2018-2019 debt service period, and first recognized with this Annual Compliance Report effective June 30, 2019.

Discussion:

Annual Compliance Reporting for all Development Impact Fees

Government Code subdivision 66006(b)(1) sets forth the annual compliance reporting requirements as follows:

For each separate account or fund established pursuant to subdivision (a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year:

- (A) A brief description of the type of fee in the account or fund.*
- (B) The amount of the fee.*
- (C) The beginning and ending balance of the account or fund.*
- (D) The amount of the fees collected and the interest earned.*
- (E) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.*
- (F) An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.*
- (G) A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan.*

(H) The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocation pursuant to subdivision (f) of Section 66001.

Attachments 1 through 12 provide the above information for each distinct Mitigation Fee Act account the City is authorized to collect.

Five-Year Findings for Development Impact Fees

If the impact fee funds have not been spent, then the City is required to make findings, regardless of whether those funds are committed or uncommitted. Those findings need to be made only once every five years. The most recent findings were included in the City's report to the City Council for the fiscal year ending June 30, 2019. The next report for the next fiscal year in which the five-year findings are due (within six months following the end of the fiscal year) is for the fiscal year ending June 30, 2024.

Government Code Subsection 66001(d)(1) sets forth the five-year findings requirements as follows:

For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

- (A) Identify the purpose to which the fee is to be put.*
- (B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.*
- (C) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).*
- (D) Designate the approximate dates on which the funding referred to in paragraph (C) is expected to be deposited into the appropriate account or fund.*

When findings are required, the City must also make them in connection with the annual compliance report. This report (along with Attachments 1 through 12) provides for the annual compliance requirement only.

Compliance Report Format

As mentioned above, Attachments 1 through 12 fulfill the annual compliance information requirements of Subdivision 66006(b)(1). Each attachment represents a separate fund account pursuant to the applicable Mitigation Fee Act sections. Each of the 12 attachments provides appropriate information to understand the purpose of each fund,

the balances in each fund, along with information on the annual activity in the fund. The attachments will help to ensure understanding of the report and provide compliance with the requirements under the Mitigation Fee Act.

The City is also required to identify an approximate date for starting construction on a public improvement within 180 days after determining sufficient funds have been collected to complete financing of the improvement. To date, sufficient funds have been collected to complete the financing of some of the traffic signals, and the required disclosure is included in Attachment 6. Some of the fees collected, such as the Water and Wastewater fees, are anticipated to be collected over the course of various debt instruments that have already been used to construct public improvements. Fees received for those purposes offset the costs that are being deducted from the fee balance; in some instances, creating a negative balance at the end of year for that fee. Where other fees are sufficient to complete the financing of public improvements, they are identified in the applicable attachment. Refuse collection container fees are sufficient immediately upon receipt of the fees.

Fiscal Impact:

Tracking of the fund activities, summarizing the activity for this report and preparation of the report requires resources of the Finance Division, the primary division tasked with completing the compliance requirements. No funds were expended on outside sources to comply with this unfunded State mandate. While this compliance report is required under the Mitigation Fee Act, the State of California provides no resources to comply with its provisions. Failure to report on activity and account balances per the applicable regulations could allow a successful challenge to the collection of the related fees in the future or repayment of previously collected fees.

Conclusion:

The purpose of the applicable legal requirements under the Mitigation Fee Act, as it applies to findings and compliance reporting, is to provide the community with information as to the status and use of impact fees collected. The report presented meets the requirements for the fiscal year ending June 30, 2022.

Respectfully submitted,

Christie Donnelly, Management Services Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Dean Albro, City Manager

- Attachments:
- 1) Police Facilities and Vehicles – Annual
 - 2) Park Land Acquisition – Annual
 - 3) Fire Protection Facilities and Equipment – Annual
 - 4) Park Improvements – Annual
 - 5) Community and Recreation Center Facilities – Annual
 - 6) Traffic Signals – Annual
 - 7) Bikeways – Annual
 - 8) Streets – Annual
 - 9) Library Facilities and Materials – Annual
 - 10) Water System – Annual
 - 11) Wastewater System – Annual
 - 12) Refuse Container Costs – Annual