



CITY OF

NEWPORT BEACH

City Council Staff Report

November 14, 2017
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Annual Reporting on Development Impact Fees & Development Agreements

ABSTRACT:

Pursuant to the Mitigation Fee Act (Government Code Section 66000, et seq.), the City is required to report on the receipt and use of development impact fees.

Regarding Development Agreements (Government Code Section 65865(e)), the City is required to comply with the reporting requirements in Government Code Section 66006 with respect to any fee the City receives or cost it recovers.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly; and
- b) Receive, review and file the Annual Reports on Development Impact Fees.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The Mitigation Fee Act (hereafter "the Act") requires each agency that imposes development impact fees to submit annual and five-year reports providing specific information about the receipt and use of such fees. Fees collected must be placed in separate accounts and not commingled with other sources of general revenues. Interest on each account must be credited to that account and used only for the purpose for which the fees were collected. The Act also requires that the City make periodic findings in order to justify continued receipt of unexpended funds, or possibly be subject to refunding a portion of such funds.

Although the Act does not apply to Developer Agreements, the reporting requirements on both the Development Impact Fee and Developer Agreements are the same and fall under Government Code Section 66006.

Section 66006(b) of the Act requires that within 180 days after the close of the fiscal year, the City must make available to the public a brief description of the fee, amount of the fee, beginning and ending balances of the account or fund for the fiscal year, and amount of fees collected and the interest earned. The Act also requires identification of each public improvement on which the fees were expended and the amount of the expenditures on each improvement, an approximate date by which the construction of the public improvement will commence, a description of each inter-fund transfer or loan made from the account or fund, and the amount of any refunds made due to the inability to expend impact fees. Section 66001(d) provides that, for the fifth fiscal year following the first deposit into the account or fund and every five years thereafter, the City shall make findings with respect to any portion of the fee remaining unexpended, whether committed or uncommitted.

The City is in conformance with the Act, is not subject to any refunding requirements, and the City has Fair Share Fees as the only source of reportable impact fees. Regarding Development Agreements, the City has three sources of reportable Development Agreements: the New Home Company Development Agreement, the Newport Beach Country Club Development Agreement and Uptown Newport Development Agreement.

On March 26, 2013, Council adopted Policy I-13, which established a funding source for and the creation of the Public Arts and Cultural Facilities Fund. Two percent of all public benefit fees received pursuant to future Development Agreements, would be transferred to this fund, for the acquisition, installation and maintenance of art structures in public places throughout the City. On August 8, 2017, the City Council approved Resolution No. 2017-55 which deleted, among others, Policy I-13. The attached reports cover the period of financial activity (July 1, 2016 and June 30, 2017) prior to when Policy I-13 was deleted. While the report makes several references to the transfer of developer funds into the Public Arts and Cultural Facilities Fund, no such transfers will appear in subsequent reports starting in Fiscal Year 2017-2018. On September 12, 2017, the City Council authorized the transfer of the total remaining balance of funds in the Public Arts and Cultural Fund to the Fire Station Fund per the Facilities Financing Plan. These funds will be used in part for the purchase of land to build the new Lido Fire Station 2. The Public Arts and Cultural Fund is currently no longer active.

With the exception of the transfers to the Public Art and Cultural Facilities Fund and the Uptown Newport Development Agreement, in which the first deposit was received during the current reporting period, all funds have been expended in the last year and, as a result, the City has nothing to report under the five-year reporting requirement.

Attachments A and B provide additional narrative and all the required information related to the annual review and accounting of applicable development impact fees and Development Agreements, as well as periodic findings concerning unexpended funds.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Development Impact Fee Report Fiscal Year 2016-2017

Attachment B – Development Agreements Report Fiscal Year 2016-2017