



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** ANNUAL DEVELOPMENT  
IN LIEU FEE REPORT

**DATE:** 04-06-05

Approved

Date

4/13/05

Council District: Citywide

## RECOMMENDATION

Review of the Annual Report regarding in lieu fees collected by the City from developers in lieu of construction of public improvements.

## BACKGROUND

The Mitigation Fee Act (Government Code section 66000 *et seq.*) requires public agencies to account for and make findings regarding fees collected by an agency as a condition of development approval, which was previously done by the City at the time each fee was adopted. The law also requires that the agency annually review and make available to the public a report accounting for the development fees held by the agency.

There are several fees that the City requires as a condition of development in lieu of requiring the construction of certain improvements that are subject to this annual reporting requirement. In lieu fees are collected for the following six separate improvement programs:

- Underground Fee Program – Developers adjacent to major thoroughfares or collector streets which have overhead distribution utilities are required to pay a fee in lieu of converting the utilities to an underground system. This fee is collected pursuant to Chapter 15.26 of the San José Municipal Code. The revenue is expended by the City pursuant to a five-year program in which undergrounding districts are formed throughout the City to convert overhead systems to underground. This program requires an annual report which is included on this City Council Agenda for consideration.
- Landscaped Median Islands – Developers may be required to pay a fee for the future construction of a landscaped median island in the street abutting their property. This fee is in lieu of requiring the developer to construct the median island improvements. This typically occurs if the City has not acquired the ultimate right-of-way in the street where the future

median island is to be located. Therefore, the construction of the median island will occur when future development occurs.

- Traffic Signals – Developers may be required to pay a fee for the future construction of a traffic signal at an intersection that is impacted by their development. If construction of the traffic signal is not feasible due to lack of full funding or right-of-way, this fee is paid in lieu of requiring the developer to construct the traffic signal.
- Flood Control Improvements – Developers may be required to pay a fee for the future construction of flood control improvements to solve an area-wide drainage problem. This fee is in lieu of requiring the developer to construct all or a major portion of the flood control improvements. The flood control improvements are often very costly and benefit many properties in addition to the developer's project. Benefiting developer contributions are accumulated until the time that the improvements can be constructed.
- Street Improvements – Developers may be required to pay a fee for the future construction of street improvements that are an area-wide concern or that cannot be physically constructed at the time of the development.
- Area-Wide Traffic Calming Improvements – Developers may be required to pay a fee for the construction of area-wide traffic calming improvements and/or area-wide traffic calming study. If at the time of the project approval, the specific traffic calming improvements in the area are not identified, the developer will be required to pay this fee in lieu of constructing the traffic calming improvements.

## ANALYSIS

The following information is included in Exhibits A and B of this annual report:

- The type of fee.
- The amount of the fee.
- The beginning and ending balance.
- The amount of each fee collected and the interest earned.
- 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);
- An identification of an approximate date by which the construction of the public improvements will take commence for those improvements where sufficient funds have been collected to complete financing of the improvement;
- A description of each interfund transfer or loan, if any, including the public improvement on which the transferred or loaned fees will be expended and the date upon which any loan will be repaid with the amount of interest on the loan; and,

- The amount of any refunds made pursuant to Government Code section 66001(e) and any allocations made pursuant to Government Code section 66001(f).

The local agency also must make certain findings with regard to unfinished improvements for which fees were collected at least five fiscal years ago. The agency must identify the purpose for which the fee was expended and demonstrate a reasonable relationship between the amount of the fee and the purpose for which it was used. The agency also must identify all sources and amounts of funding anticipated to complete financing and incomplete improvements and designate the approximate dates on which this funding is expected to be deposited into the account.

If these findings are not made, the agency must refund the moneys to the current record owner or owners of the lot or lots of the development project on a prorated basis. Fees are also to be refunded if the agency fails to identify within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvements will be begin. The agency may refund the unexpended fee by direct payment, by providing a temporary suspension of fees, or by another reasonable means.

The remainder of the fees will be spent within each program as follows:

- Underground Fee Program – Within five years, this revenue is programmed into a master plan by the City for expenditure in undergrounding districts formed throughout the City to convert overhead systems to underground.
- Landscaped Median Islands – The City anticipates using many of these fees to reimburse developers for constructing landscaped median islands beyond their responsibility of one-half of the island fronting their project sites.
- Traffic Signals – The City may require a developer to install a signal and reimburse the developer for costs that are deemed to be beyond the development's impact. This reimbursement can come from previously collected developer fees for that signal from City funds.
- Flood Control Improvements – Flood control improvements usually benefit several properties within a drainage area. The City uses the in lieu fees to construct flood control improvements via a Capital Improvement Project.
- Traffic Mitigation and Traffic Calming Improvements – The City may require a developer to construct street improvements and reimburse the developer for costs that are deemed to be beyond the development's impact. This reimbursement can come from previously collected developer fees for that traffic signal and traffic calming mitigation.

The City may also use fees as all or part of the funding for a Capital Improvement Project.

**OUTCOME**

Provide an annual report that summarizes the in lieu fee program activity.

**PUBLIC OUTREACH**

These fees are collected as part of land use entitlements process. As such, they are negotiated with applicants and are often discussed with Communities adjacent to the development as part of the public outreach for the land use change.

**COORDINATION**

This report has been coordinated with the City Attorney's Office, the City Manager's Budget Office and the Departments of Transportation and Planning, Building and Code Enforcement.

**CEQA**

Not a project.



KATY ALLEN  
Director, Public Works Department