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OFFICE OF THE CITY CLERK
OAKLAND
2013 MAY 30 PM 4:29

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Development Impact Fees

DATE: May 24, 2013

City Administrator
Approval

Date

5/30/13

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council:

Receive A Report And Take Possible Action On Establishing Potential Impact Fees, Including Fees For Transportation Infrastructure Needs, Affordable Housing Needs, Or Other Development Needs

OUTCOME

Staff are not requesting any specific Council action in this report. Following its presentation, staff will follow through on any direction from Council regarding next steps in the consideration and implementation of any possible Development Impact Fees.

BACKGROUND/LEGISLATIVE HISTORY

As requested by Council member Reid at the Rules Committee meeting of May 16, 2013, this report describes Development Impact Fees already adopted, and Development Impact Fees that have been proposed in the past, but not adopted.

The City currently has three types of Development Impact Fees in place:

1. Jobs and Housing Development Impact Fee; Adopted by City Council in 2002
2. Sanitary Sewer Mitigation Fee; Adopted by City Council in 2002
3. School Impact Fee; State-Imposed

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The City has discussed and/or proposed the following additional Impact Fees:

1. Transportation Impact Fee; Last proposed in 2009
2. Capital Facilities Impact Fee; Last proposed in 2009
3. Expansion of the Jobs and Housing Development Impact Fee: Never proposed

A development impact fee is a monetary exaction, other than a tax or special assessment, that is charged by a local agency to the applicant. It is in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project (Government Code Section 66000(b)). Public facilities include public improvements, public services, and community amenities (Government Code Section 66000(d)).

Impact fees are governed by the California Government Code Sections 66000-66008 and are commonly referred to by their 1987 authorizing legislation Assembly Bill 1600 (AB 1600) or the title provided by the legislature, "The Mitigation Fee Act."

AB 1600 established a process for formulating, adopting, imposing, collecting, and accounting for impact fees for development projects. The local agency must demonstrate a "nexus", or reasonable relationship, between the impacts stemming from new development and the type and amount of the fee imposed. Development impact fees for the construction of public improvements or facilities can be collected at the building permit application stage, date of final building inspection, or upon issuance of a certificate of occupancy. The fees collected by a local agency shall fund the construction of public improvements or facilities. *Development impact fees cannot be assessed for operation and maintenance of capital facilities. New development cannot be required to pay for existing deficiencies.*

Oakland does not currently have a mechanism like many Bay Area cities (including San Francisco, San Jose, Fremont, Emeryville, Walnut Creek, and at least 80 other California jurisdictions), to account for or recoup the cost of private development's impact on the City's infrastructure. Moreover, the use of development impact fees to pay for public improvements was recommended in a 2009 Public Works Audit.

Development Impact Fees may be used to support transportation improvements such as street systems, sewers, storm drains, paving, sidewalks, and lighting; capital facilities impacts fees may support public facilities such as police and fire stations, libraries, parks, senior centers, communications infrastructure, affordable housing, and public art. Other arrangements and combinations of fees are possible, there is no prescribed formula as to which fees may or may not be implemented.

ANALYSIS

EXISTING FEES:

1. Jobs and Housing Development Impact Fee

There is an existing Jobs/Housing Development Impact Fee, which was adopted by the City Council on July 30, 2002 per City Council Ordinance No. 12442, which provides for charging an impact fee on new construction of office space and warehouse/distribution uses to benefit affordable housing developments restricted to very low income households, or in-lieu production of units instead. This impact fee was supported by a nexus study completed by David Paul Rosen & Associates, and the impact fees are to be adjusted annually. The current amount is \$4.74 per square foot in excess of 25,000 square feet (i.e., no fees for 25,000 sq. ft or less; \$4.74 per sq. ft. 25,001 and over). The funding was to be used to create an Affordable Housing Trust Fund. However, Council voted in 2002 to delay implementation until July 1, 2005.

2. Sanitary Sewer Mitigation Fee

There is an existing Sanitary Sewer Mitigation Fee, which was adopted by the City Council in July 2002. As of July 1, 2005, this Fee has been applied to projects on a case by case basis for which a building permit is approved. The fee can only be used for sewer improvements, and it is calculated by the amount of additional flow impacting the sub basin(s) and other factors related to the location of the project and pipe sizes. It is escalated yearly per the Construction Cost Index of the Engineering News Record.

3. School Impact Fee

There is an existing School Impact Fee that is imposed by the State of California and is collected by the City.

PREVIOUSLY PROPOSED FEES:

1. Transportation Impact Fee

The City does not have a Transportation Impact Fee, but has made past attempts to adopt one, most recently in 2010. This fee is used for street system improvements (the upgrade, addition, or replacement of paving, traffic signals, signs, roads, and way-finding devices, including the adoption of an Intelligent Transportation System network); bicycle rider and pedestrian-related facilities and improvements; and transit-supportive improvements such as bus shelters, signs, and sidewalk widening.

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The primary advantage of a Transportation Impact Fee is that it allows for equitable contributions to new street system infrastructure. Currently in Oakland, the first developer in has to pay for all required infrastructure improvements. Subsequent developers, even if their project has an impact on the same segment or area of the street system, are not required to pay for improvements. This arrangement discourages developers from pulling building permhs and breaking ground, because they do not want to be the sole bearer of the costs of required infrastructure. Without a Transportation Impact Fee and related nexus study, the costs of infrastructure improvements cannot be apportioned fairly, and the first developer assumes all of the costs and risks.

2. Capital Facilities Fee

The City does not have a Capital Facilities Fee, but has made past attempts to adopt one, most recently in 2010. This fee is used to help pay for public facilities such as police, fire, library, and senior centers; and communications infrastructure, affordable housing, and public art.

3. Expansion of the Housing Development Impact Fee

The current Jobs and Housing Development Impact Fee only covers new office and warehouse/distribution centers, not retail space or market rate housing developments. It would seem likely that retail, which provides for lower paying jobs, could have a nexus with creating a need for affordable housing, although this should be balanced with the desire to attract additional retailers to the City. On the residential side, recent case law has raised legal questions about inclusionary housing requirements including alternative in-lieu fees imposed on market rate rental housing developments. On the residential side, recent case law has raised legal questions about inclusionary housing requirements including alternative in-lieu fees imposed on market rate rental housing developments. However, pending legislation (AB 1229) would clarify cities' authority to require inclusionary housing including in-lieu payments on market rate development to promote affordable housing. An impact fee requirement alone on market rate housing, without an inclusionary component, would not face the same legal questions, although it too would require a nexus study.

PAST ACTIONS TAKEN TOWARDS NEW FEES:

In 2009, staff issued a Request for Proposals (RFP), and in 2010 selected a consuhant to prepare a nexus study of Transportation and Capital Impact Fees, and to complete any necessary environmental review of the development impact fee program. The 2009-10 procurement process did not progress to the point of reconmending a contract award to Council, as the necessary funding could not be identified.

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NEXT STEPS

Per Government Code Section 66001, any action establishing, increasing, or imposing a fee as a condition of approval of a development project, the local agency shall:

- 1) Identify the purpose of the fee.
- 2) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.
- 3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed (commonly called a nexus).

Depending upon the ultimate nature and scope of the proposed development fee program, preparation of some form of environmental document that is adequate to meet the requirements of the California Environmental Quality Act (CEQA) may be required. This would be part of the consultant's assignments; to determine if an EIR is required.

The primary challenge for the City is finding the funding to initiate the program. The estimates from consultants that had qualifying proposals ranged from \$699,400 to \$792,788. In addition, one part-time employee would be required to initiate and operate the program funds, estimated at \$80,000 per year. All consultant and staff costs could be recovered once the program is in place and fees are assessed.

Therefore, these steps would be required in order to pursue possible future Development Impact Fees:

1. Find funding sources and assign project management staff; and/or.
2. Apply for full or partial assistance from outside funders.
3. Prepare a Request for Proposals, accept bids, and award a consulting contract to complete the required studies.

PUBLIC OUTREACH/INTEREST

No public outreach was conducted in the preparation of this informational report beyond the standard agenda noticing process.

COORDINATION

This report has been reviewed by the Office of the City Attorney and by the Budget Office, and with staff from the Public Works Agency and the Department of Housing and Community Development.

COST SUMMARY/IMPLICATIONS

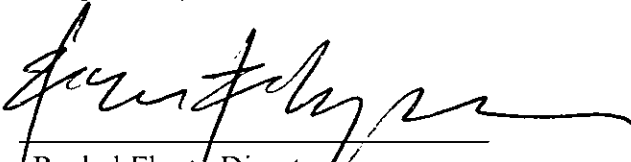
This report is informational only, and by itself incurs no cost to the City. Should the City elect to pursue Development Impact Fees further, costs for a nexus study and staff time would be incurred as described elsewhere in this report.

SUSTAINABLE OPPORTUNITIES

There are no sustainable opportunities identified from the delivery of this informational report. However, any future Development Impact Fees imposed by the City could have significant economic, environmental, and social equity effects, depending upon the exact kinds of fees imposed and the purpose to which the fees are directed.

For questions regarding this report, please contact Rachel Flynn, Director, Department of Planning and Building, at (510) 238-2229.

Respectfully submitted,



Rachel Flynn, Director
Department of Planning and Building