



REPORT TO COUNCIL

SUBJECT

Introduce an Ordinance to Amend Titles 3 (Revenue and Finance) and 19 (Zoning) of the Sunnyvale Municipal Code related to the Transportation Impact Fee and Housing Impact Fees in Conjunction with the Study Issue to Evaluate the Timing of Park Dedication In-lieu Fee Calculation and Payment (2015-7151) (Continued from March 15 and March 29, 2016)

REPORT IN BRIEF

On September 30, 2014, while discussing the fair market land value for the Park Dedication In-Lieu Fee, the City Council sponsored a study issue to evaluate the timing of park dedication in-lieu fees calculation and payment. During the public hearing, members of the development community requested that mitigation or impact fees be calculated at the time a planning application is determined to be complete. On January 30, 2015, the City Council approved the study issue with an expanded scope (Attachment 1) and directed staff to provide options to simplify the process of fee calculation and collection for all development related mitigation fees.

There are four mitigation fees commonly associated with development applications: Transportation Impact Fees (TIF), Housing Impact Fees (HIF), Park Dedication In-lieu Fees (PIL) and Sense of Place (SOP) fees (currently in three geographic areas). All of these impact fees are required by the Sunnyvale Municipal Code (SMC), except for Sense of Place fees that are identified by area plans and imposed by the City Council in the annual Fee Resolution and implemented through conditions of approval. Other impact fees are project specific, or may be associated with other agencies not under City control (e.g., school impact fees). This report focuses on three mitigation fees required in the SMC: TIF, HIF, and PIL for rental (no subdivision map) housing developments. The timing of SOP fee calculation can be modified administratively, depending on City Council action. Currently, the timing for calculation of these fees varies as shown in a table within the discussion section of this report.

This report provides options on when development impact fees could be calculated, pointing out pros and cons of each option. Staff recommends the adoption of an ordinance to amend Title 3 (Revenue and Finance) and Title 19 (Zoning) of the SMC related to the TIF and HIFs to establish mitigation fee calculation at the time of building permit application (which is the current requirement for rental housing PIL and building permit fees). This approach will reduce error and streamline development processing. It is important to note that this recommendation could result in slightly lower revenue to the City; however this situation is partially offset against the cost of staff time to process applications and to correct any errors. The differences in revenue are discussed in more detail below and further demonstrated in Attachment 4.

The Planning Commission considered this item at its regular meeting on February 22, 2016 and passed a motion (7-0) to recommend Alternative 1 (staff recommendation) to the City Council. The

minutes from that hearing are included as Attachment 6.

BACKGROUND

Annually, on a fiscal year basis, the Director of Community Development determines the fair market value for an acre of land in the City for the Park Dedication In-lieu Fee (PIL) and presents it to the City Council for their consideration as part of the review and adoption of fees. On September 30, 2014, the City Council sponsored the study issue the timing of calculation and payment of PIL fees (see Attachment 1) after a public hearing regarding the fair market value of land, based on requests from the development community. The minutes from that hearing are included as Attachment 5.

Staff supported this study issue in a broader form as stated in the “staff recommendation” section: “This study would allow a focus on the date in-lieu fees are established, and could provide options to simplify the process of fee collection for all development fees.” Therefore, the focus of this study was expanded to evaluate the timing of fee calculation and payment for all development in-lieu (or mitigation) fees. Staff had been discussing internally the possible need for uniformity in the timing of fee calculations before City Council prioritized this as a study issue.

EXISTING POLICY

COUNCIL POLICY MANUAL

Chapter 7 - Legislative Management

Long Term Financial Goals

VII. To ensure accuracy and policy consistency in City processes and reporting through regular financial and performance audits of programs.

7.1B REVENUE POLICIES

B.3.4 Monthly reviews and periodic audits of all major locally administered revenue sources will be conducted.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

DISCUSSION

Mitigation or in-lieu fees are collected based on the recognition that development projects create impacts and therefore should contribute to the mitigation of those impacts. There are several types of mitigation programs associated with development projects, mostly fee-based; these revenues are used for a variety of mitigation efforts within the City. The following sections provide an overview of the various mitigation fee types and the current regulations on calculation and payment for each. A following section evaluates the pros and cons of different times the fees could be calculated.

Common Mitigation Fees Associated with Development Applications

Transportation Impact Fees (TIF)

(SMC Chapter 3.50, see Attachment 3)

Adequate transportation improvements are needed to protect the health, safety, and general welfare of the community members to facilitate transportation, and to promote economic well-being within the city. All types of development require and use the street system (vehicles, bicycles and pedestrians).

In order to ensure that the appropriate level of service is maintained, and to promote the health, safety, and general welfare of the community, it is necessary that new development pay a fee (the TIF) representing its share of costs of the necessary improvements. The TIF is assessed for net new peak hour trips of all types of development or changes in land use. By code, the TIF fee is currently calculated at time of payment.

There are nuances to the current TIF that are worth mentioning because they effect when this fee may be calculated and paid:

1. There is opportunity to “pre-pay” the TIF for development applications based on the wording in the SMC which states, “the fee shall be paid in full to the city before any building permit is issued.” This means that the TIF could be paid at any point after a project is approved, including in an earlier fiscal year than the building permit issuance.
2. In the Moffett Park Specific Plan area, an applicant may obtain an extended, seven-year entitlement by prepayment of at least 25% of the TIF applicable to the project. Therefore, if the fees were calculated at planning application completeness and a project within the Moffett Park area did not apply for building permits for seven years the fees that would have been collected at the submittal could be 14-21% higher. Receiving the fees earlier would allow the City to put it to use for the intended mitigation earlier, or earn interest, however interest rates have been substantially lower than cost of living changes in recent years.

Housing Impact Fees (HIF)

(SMC Chapter 19.75, see Attachment 3)

The payment of housing impact fees for certain types of development is used to mitigate the impact of non-residential and residential developments have on affordable housing in the City of Sunnyvale. The HIF implements the housing element of the City’s General Plan and California Government Code Section 65583(c), which expresses the state housing policy that requires cities to assist in the development of adequate housing to meet the needs of lower-income households. HIF are placed in the City’s housing mitigation fund and used to support the development of affordable housing within the city. The provisions for housing mitigation were amended in July 2015 and are assessed on market rate rental housing and for most non-residential developments on net new square footage.

Park and Open Space Land Dedication In-lieu Fee (Quimby Fees)

(SMC Chapter 18.10, see Attachment 3)

This fee is related to ownership housing projects that involve subdivision maps, also known as “Quimby Fees”. It is based on the fair market value in effect at the time the final map is complete and is paid upon approval of the final map. The in-lieu fee is required when land dedication is not possible, practical or desirable or under other circumstances outlined in SMC section 18.10.020(b). When dedication is part of a subdivision application, the City obtains title to the park property as part of the recordation of the final map.

Because Quimby fees are tied to the approval of a final subdivision map, staff does not recommend changes to the timing of calculation and payment of these fees.

Park Dedication In-Lieu Fees for Rental Housing Projects (PIL)

(SMC Chapter 19.74, see Attachment 3)

Additional residents from new multifamily rental housing projects affect the use and availability of parks and recreation space and facilities in the city. The required open space and recreation amenities provided in multifamily residential housing projects are generally insufficient to meet all the

park/open space needs of the residents. The PIL fees are intended to treat multifamily/rental housing developments in a similar manner as ownership residential development by requiring that such development contribute its fair share toward park land or improvements, and/or purchase and development of parks and recreational facilities. PIL fees are assessed for net new residential units when three or more units are built. Any dwelling units designated as affordable housing are exempt from the total number of dwelling units used in calculations.

Sense of Place Fee (SOP)

Three geographic areas are currently subject to SOP fees (Tasman Crossing, Fair Oaks Junction and East Sunnyvale). The need for SOP fees is determined in area plans, the fees are established by City Council in the annual fee resolution and the fees are required as a Condition of Approval of planning applications. SOP fees are used to plan and construct public improvements that: enhance the quality of life for residents and employees of an area through improved pedestrian access to parks, open space, schools, retail amenities and public transportation; encourage pedestrian, bicycle, and transit use through streetscape improvements, land use planning, and architectural design; and, aim toward “complete street” designs that accommodate movements of all modes of transportation including bicycle, pedestrian and transit traffic. SOP fees and related improvements augment the site-specific sense of place improvements and also provide matching funds for grants for improvements that benefit a larger area.

SOP fees are not reviewed in this report because SOP fees are not addressed in the SMC. The process for fee calculation and collection is based on standardized language used in a condition of approval. In order to attain consistency; the Community Development Director can adjust the recommended condition of approval language to mirror action taken by City Council on the other impact fees.

Focus of the Discussion

This report focuses on three mitigation fees required in the Sunnyvale Municipal Code (SMC): Transportation Impact Fees (TIF), Housing Mitigation Fees (HMF) and Park Dedication In-Lieu fees for rental housing (PIL).

Mitigation Fee Calculation and Payment Schedule

The SMC sets forth the timing of calculation and payment of most development fees. The timing of building permit fee calculation is not specified in the codes. By long-standing practice, Sunnyvale and other cities in Santa Clara County calculate fees at building permit submittal; plan check fees are paid at building permit submittal and all other fees are paid when the permit (i.e., building permit, mechanical permit, and electrical permit) is issued. As shown in the table below, there are currently inconsistencies with regard to when impact fees are calculated:

Fee	Time of Fee Calculation			Time of Fee Payment	
	Building Permit Submittal	Time of Payment	Final Map Completeness	Building Permit Issuance	Approval of Final Map
Building Permits	X			X	

Park Dedication In-lieu fee for Subdivisions			X		X
Park Dedication In-lieu Fee for Rental Properties	X			X	
Housing Impact Fee		X		X	
Transportation Impact Fee		X		X	
Sense of Place Fee*	X			X	

*The Sense of Place Fee calculation and payment requirements are stated in the project conditions of approval.

Inconsistencies in the timing of fee calculations can lead to confusion on fee rates for staff and developers, potentially resulting in errors if a project's building plan check period spans across a new fiscal year.

Calculating the mitigation fees at the time of building permit issuance (HIF and TIF) can create additional room for error based on the way a building plan check works for some projects. The calculation of the mitigation fees is completed by the project planner and the permits are issued by the building division. Often, the permit is issued several weeks or months after the project planner has calculated the fees and approved the building permit as satisfying all zoning and planning permit conditions of approval. If a project's plan check time period spans across a fiscal year the fee would need to be recalculated prior to permit issuance under current regulations. This situation can occur when a project includes multiple residential units; a master plan check is completed and then individual building permits are issued for separate buildings or units without the need to reroute the plans to multiple divisions for further review. A few times a year permits have been issued with the fees amounts that were entered in the plan check system at project submittal and the error is discovered during fee audits several months later. Staff then follows up with the applicant to collect the balance of the fees. If the fees were all calculated at the time of building permit submittal, (as the building permit fees are) there would be a smaller margin of error for staff since the rate that is in place at the time of the planner's first review would be maintained for the duration of the plan check process.

To illustrate how commonly this occurs, staff looked at the building permit records for the last five fiscal years and found that 68 projects were issued building permits that were subject to development mitigation fees described above. Of the 68 projects, 24 (35%) of the projects were in the plan check process that spanned over a fiscal year. Permits were issued with dated mitigation fees times several times. Both the building and planning staff are now aware of this potential issue and have worked to eliminate the errors.

A hallmark of Sunnyvale's economic development environment is efficient processing of applications and predictability in the process and time frames for review. These practices are also important to residents and would be relevant to this study when there is a new accessory dwelling unit on a single-family lot as TIF is required for these uses. If all of the fees are calculated up front when the building

application is submitted, the applicant has sufficient time to obtain the necessary funds and financing to pull building permits once the review is completed.

Other Cities

Staff surveyed several of the other cities in the County to see when fees are generally calculated and paid. While other cities do not have exactly the same mitigation fees that Sunnyvale has, it was learned that three of four cities that imposed mitigation fees calculate or lock them in at the time of building permit submittal and require payment at building permit issuance (Mountain View, Los Gatos, Cupertino and Milpitas) as shown in the table in Attachment 7. Milpitas updates the mitigation fees prior to building permit issuance.

Options to Consider

Three options are presented that create consistency in when how mitigation fees are calculated and collected.

Option A (Staff Recommendation): Modify the TIF and HMF Regulations to match the Rental Housing PIL and Calculate at the Rate in Effect at Building Permit Submittal

Adopt an ordinance (see Attachment 2) to amend Titles 3 (Revenue and Finance) and 19 (Zoning) of the SMC related to the TIF and HIFs to match the language in SMC section 19.74.060, "The fair market value applicable to the calculation of all park in-lieu fees shall be based on the fee in effect at the time of complete building permit application submittal. The calculation of all park in-lieu fees shall be applied at building permit application submittal and payable prior to building permit issuance." Large development projects typically file for building permits over several years. Each phase of building permit applications would generate updated fee calculations for that phase.

Pros:

- Creates consistency for timing of calculation and payment for development mitigation fees and related building permit fees.
- Informs project applicants on the total fees they will pay when their building permit is issued after the first round of plan check, regardless of the duration of their plan check process (provided they are making progress on their review).
- Reduces the complexity of the current process and the possibility of staff error calculating required mitigation fees when project review spans fiscal years (and reduces auditing/collection costs if incorrect fees were collected).
- For multi-building projects with permits submitted in different fiscal years, later buildings would have higher fees.
- Creates consistency with how neighboring cities process and collect development fees.

Con:

This option could result in an approximately 3% reduction of TIF and HMF mitigation fees collected by the City for development projects where a project's plan check process spans a fiscal year. Based on a review of five years data, the approach could apply to about 35% of the projects with impact fees, or about 1% of potential revenue.

Option B: Modify the TIF, HIF and PIL to Calculate Fees based on the rate in effect when Planning Application is Determined Complete

The development community has suggested that fees should be calculated at the time a planning application is determined to be complete (and may be scheduled for a hearing) or alternatively, calculated at the time of planning application approval. This approach would make known the project costs earlier in the process. This option would require modifications to three sections of the SMC.

Pros:

- Provides certainty to the development community about mitigation fees.
- If mitigation fees are ever decreased, which did occur in the 2014-15 fiscal year for the TIF fee for projects south of 237, the fees calculated earlier in the process could benefit the City. This is a rare occurrence though, usually fees increase or stay at the same rate.

Con:

The option would result in less revenue for all impacts fees. When there is a delay in exercising the planning permit, there could be significantly lower revenue if the fee was determined when an application was determined complete - approximately 3% for every year delay in building permit application submittal for all projects with impact fees. A project that obtains the first building permit toward the end of the entitlement period could pay fees that were calculated three or four years before building permits are issued; resulting fee is about 12-15% lower than if calculated at building permit submittal. For large multi-phased projects (or projects for which the subdivision map timeline has been extended) the calculation could have been ten or more years earlier than the last building permit issued, or 35% lower fees. If the fee is determined at time of planning application approval, this difference in fees would be a little less with this alternative.

Option C: Maintain the Status Quo

Continue to calculate mitigation fees in the same manner that has been shown in the table above (according to the SMC).

Pro:

- Revenues for TIF and HMF for projects that have building permit applications that span fiscal years would be the same as current revenues which is slightly higher than the staff recommendation option.

Cons:

- Continued risk of error for fees for development projects whose plan check period spans into a new fiscal year and costs for auditing follow up.
- Continued risk of errors based on the inconsistency when the TIF and HIF are calculated vs. when PIF, SOP fees and all building permit related fees are calculated.

FISCAL IMPACT

Changes to the timing for when fees are calculated can make a difference on the overall fees collected by the City for a development project. Generally mitigation fees increase in a new fiscal year by 2-3%. However, as Park Dedication Fees are based on land value, the change can be more substantial and has been in recent years; this fee dropped 28% (from \$96 to \$69 per square foot) in 2010 and increased back to \$96 in 2014.

In order to illustrate what the changes could mean for collection of fees, staff has created a table (see

Attachment 4) that shows the total fees collected based on the fee calculation timing from the various options outlined above.

The table shows three general project types-rental residential, for sale residential and R&D. A 100 unit rental project was selected as this is an average sized rental development in the past five years and a 25 unit for sale multi-family project was selected for review. The R&D example is reflective of a single-building permit for this use (the entire project could have more buildings where permits are submitted in different phases). If fees are calculated at the time of Planning Application completeness, the revenues are the lowest and if all fees are calculated at the time of Building Permit Issuance, the highest amount of fees would be collected by the City.

In addition, creating consistency in how fees are calculated for development projects will decrease the risk of error in calculating fees for a project whose plan check period spans into a new fiscal year-as reported, an issue that does not occur regularly.

PUBLIC CONTACT

Public contact regarding these study issues was made through the following ways:

1. Posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website;
2. Publication in the *Sun* newspaper, at least 10 days prior to the hearings;
3. E-mail notification of the hearing dates sent to all interested parties, neighborhood associations and developers; and
4. One developer outreach meeting held with interested parties to discuss the study issue on October 22, 2015.

Developer Outreach Meeting

Staff conducted an outreach meeting with developers on October 22, 2015. Two members of the development community attended the meeting and both were in support of the recommended changes and the creation of consistency in when fees are calculated. One of the attendees also submitted a support letter (see Attachment 8).

Public contact regarding the study issue was made through the following ways:

No one spoke on the item at the Planning Commission public hearing on February 22, 2016.

ALTERNATIVES

1. Introduce an Ordinance to Amend Titles 3 (Revenue and Finance) and 19 (Zoning) of the Sunnyvale Municipal Code related to the Transportation Impact Fee and Housing Impact Fees to calculate fees at the time of building permit submittal.
2. Introduce an Ordinance to Amend Titles 3 (Revenue and Finance) and 19 (Zoning) of the Sunnyvale Municipal Code with modifications to the staff recommendation.
3. Do not introduce an Ordinance to amend Titles 3 (Revenue and Finance) and 19 (Zoning) of the Sunnyvale Municipal Code and make no changes to the current practice at this time.

STAFF RECOMMENDATION

Alternative 1: Introduce an Ordinance to Amend Titles 3 (Revenue and Finance) and 19 (Zoning) of the Sunnyvale Municipal Code related to the Transportation Impact Fee and Housing Impact Fees to calculate fees at the time of building permit submittal.

The recommended modifications to the Sunnyvale Municipal Code will help create consistency in the way development mitigation fees are calculated and paid and will also make them consistent with the way building permit fees are calculated. These changes will create consistency for all development fees and ensure fees are not calculated 2-3 years (or in a few cases, more than 10 years) before the project receives a building permit. The fee consistency will also help applicants know what they will pay in fees after the first plan check comments are received, regardless of how long they are in the plan check process. Staff acknowledges that impact fee revenues will be slightly lower and finds that the consistency will streamline training and the permit issuance process.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered this item at its regular meeting on February 22, 2016 and passed a motion (7-0) to recommend that the City Council adopt an Ordinance to Amend Titles 3 and 19 (Alternative 1).

The Planning Commission was supportive of a streamlined process for fee collection and consistency in when fees are calculated in association with development applications. They recognized that some revenue may be lost with this change, but feel that consistency will lead to less time spent by staff on updating fees and a better understanding for project applicants to know what they will be paying once they submit for a building permit.

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ATTACHMENTS

1. Study Issue Paper
2. Draft Ordinance
3. Sunnyvale Municipal Code Sections 3.50, 19.74, 19.75 and 18.10
4. Fee Calculation Examples
5. Excerpt of City Council Minutes from September 30, 2014
6. Excerpt of the Planning Commission Minutes from February 22, 2016
7. Table Showing when other Cities Calculate Mitigation Fees
8. Public Comment Letter from Dostart Development Company, LLC