



REPORT TO COUNCIL

City of Sacramento

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Staff Report
October 28, 2008

**Honorable Mayor and
Members of the City Council**

**Title: Establishment of Development Impact Fee Deferral Program as a Part of an
Economic Stimulus Strategy**

Location/Council District: Citywide

Recommendation: Adopt an Ordinance adding Chapter 18.52 to Title 18 of the Sacramento City Code relating to the establishment of a Development Impact Fee Deferral Program as part of an Economic Stimulus Strategy.

Contact: Leslie Fritzsche, Downtown Development Manager, 808-5450 and William Thomas, Development Services Director, 808-1918

Presenters: Leslie Fritzsche, Downtown Development Manager

Department: Economic Development and Development Services

Division: Downtown and Administration

Organization No: 18001021 and 21001011

Description/Analysis

Issue: Traditionally one of the major hurdles to development is the significant costs associated with predevelopment and upfront fees and charges. Lump sum payment of development impact fees at the time of building permit issuance can be a burden and sometimes a barrier to development. This is especially true when the availability of capital is as limited as it is under the current capital market conditions. Building permit issuance in fiscal year (FY) 2007/08 was down fifteen percent (15%) from FY2006/07. In August 2008, seventeen percent (17%) fewer building permits were issued than in August 2007. To try and address this trend, City staff is developing a package of tools and incentives designed to assist in keeping development moving during these difficult economic times. As a means to stimulate both residential and commercial development, staff has developed a Development Impact Fee Deferral Program as a component of an Economic Stimulus Strategy.

The proposed Development Impact Fee Deferral Program allows developers to defer the payment of City-controlled impact fees until the City issues a certificate of occupancy, the project closes escrow, or three (3) years, whichever is earlier. In order to defer impact fees, a developer must enter into a Fee Deferral Agreement (Agreement) with the City. The Agreement will require participating commercial developers to post security in the form of an assigned passbook or certificate of deposit, irrevocable letter of credit, surety bond, senior lien against the property, or reservation of funds in an escrow account.

The deferral reduces the amount of cash required during construction. Fees which pay for staff time and services will still be required to be paid at application and at issuance of building permits as they are currently required to do. Deferring the impact fees until the end of a project will potentially put projects in a better situation to secure financing in a troubled capital market and will result in cost savings from lower construction interest. If approved, the current program will be available until December 31, 2009. During the fall of 2009, staff will evaluate the program's benefits and impacts and return to Council by the end of the year with a recommendation regarding a potential extension of the program.

This proposed program compliments the City's existing Fee-Financing Program operated by Treasurer's Office which is designed for large commercial, industrial and residential development projects. It enables developers to finance the payment of development fees over time. This is done by including the project within a community facilities district, issuing bonds through the City, and levying special taxes to retire the bonds. The City's existing Fee-Financing Program has provided more than \$9.6 million in financing for eighteen (18) projects since its inception in 1995.

Staff is currently working with the Treasurer's Office to research other financing options including the Statewide Community Infrastructure Program (SCIP) offered through California Communities, a joint powers authority between the California State Association of Counties and the League of California Cities. SCIP is another fee financing tool that provides financial assistance for development and infrastructure projects, particularly for smaller developments that may not lend themselves to individual bond issues. This will provide one additional component to the City's Economic Stimulus Strategy.

Policy Considerations: The proposed Development Impact Fee Deferral Program is consistent with the City's Strategic Plan Goal of encouraging economic development throughout the City. The development of a fee deferral program also furthers the goals of the adopted Economic Development Strategy by strengthening the city's business climate and fostering development. The proposed plan is also consistent with the Downtown Housing Investment Strategy goal of alleviating impediments and creating incentives to foster downtown housing by creating a fee deferral program.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, establishing a fee deferral program does not constitute a project and is therefore exempt from review.

Individual projects will follow the required CEQA process as part of the entitlement process.

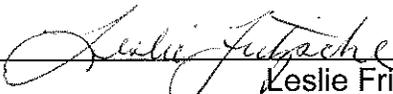
Sustainability Considerations: Adoption of the Development Impact Fee Deferral Program does not have sustainability considerations. Individual projects that utilize the Fee Deferral Program may be subject to the requirements of the City's Sustainability Master Plan.

Commission/Committee Action: The Development Impact Fee Deferral Program was brought before the Development Oversight Commission (DOC) for review and comment on June 2, 2008, July 7, 2008, and October 6, 2008. The DOC supported the establishment of a Fee Deferral Program. The Law and Legislation Committee reviewed the ordinance on October 14, 2008 and voted to allow Certificate of Occupancy as adequate security for single family homes. Following that revision, the Committee voted unanimously to forward the ordinance to City Council for approval.

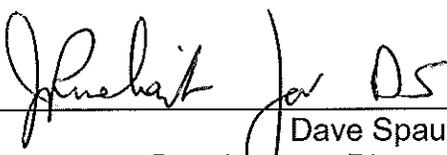
Rationale for Recommendation: The proposed Development Impact Fee Deferral Program is one component of an Economic Stimulus Strategy that the Economic Development Department is currently developing. In May 2008, the City Treasurer's Office surveyed seventeen (17) cities to determine if they had fee deferral programs or were in the process of developing them. Approximately seventy percent (70%) of respondents had some form of fee deferral program or were in the process of creating programs. All of our neighboring cities including Rancho Cordova, Roseville, Folsom and Elk Grove have fee deferral programs similar the one proposed here. The fee deferral program is designed to mitigate the financial cash flow impacts of development fee payments and encourage economic development in the City of Sacramento.

Financial Considerations: The proposed Development Impact Fee Deferral Program defers City controlled impact fees. The list of fees eligible for deferral is contained in Attachment 3. Fees that impact the City's General Fund will not be eligible for deferral.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: 
Leslie Fritzsche
Downtown Development Manager

Respectfully Submitted by: 
William Thomas
Development Services Director

Approved by: 
Dave Spaur
Economic Development Director

Recommendation Approved:


Ray Kerridge
City Manager

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Attachment 1
ORDINANCE NO. 2008-xxx

Adopted by the Sacramento City Council
_____, 2008

**ESTABLISHING A TEMPORARY PROGRAM FOR DEFERRING PAYMENT
OF CITY FEES ON DEVELOPMENT PROJECTS BY ADDING CHAPTER 18.52
TO THE SACRAMENTO CITY CODE**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1.

The Sacramento City Council hereby finds as follows:

- A. Fees imposed on development can pose a substantial financial burden on many projects, especially if developers must pay the fees when building permits are issued. To help stimulate commercial and residential development, the city offers a fee-financing program for development projects that meet certain criteria.
- B. To further stimulate such development during the current economic slowdown, the city will allow developers to defer payment of specified city fees in accordance with the criteria and conditions set out in section 2 of this ordinance.

Section 2.

The Sacramento City Council hereby amends the Sacramento City Code by adding the following as Chapter 18.52 of Title 18:

Chapter 18.52 DEFERRING PAYMENT OF CITY FEES ON DEVELOPMENT PROJECTS

18.52.010 Definitions.

The following definitions apply in this chapter:

- A. "City Attorney" means the city attorney or the city attorney's designee.
- B. "City Fee" means any of the following fees the city imposes on a Project and collects when the city issues a building permit for the Project:
 - 1. Downtown Transportation Fee (subsection A.1 of section 18.36.040)

2. Railyards Transportation Fee (subsection A.1 of section 18.36.040)
 3. Richards Boulevard Transportation Fee (subsection A.1 of section 18.36.040)
 4. Railyards Public Facilities Fee (subsection A.2 of section 18.36.040)
 5. Richards Boulevard Public Facilities Fee (subsection A.3 of section 18.36.040)
 6. Jacinto Creek Facilities Fee (subsection A.1 of section 18.28.050 and subsection B of section 18.28.110)
 7. North Natomas Public Facilities Fee (subsection A.1 of section 18.24.050)
 8. North Natomas Transit Fee (subsection A.2 of section 18.24.050)
 9. North Natomas Public Land Acquisition Fee (subsection A of section 18.24.280)
 10. North Natomas Regional Park Land Acquisition Fee (subsection B of section 18.24.280)
 11. Park Development Impact Fee (subsection A of section 18.44.030)
 12. Building Excise Tax (section 3.36.010)
 13. Willowcreek Fee (subsection A.1 of section 18.32.050)
 14. Sewer Development Fee (section 13.08.480)
 15. Combined Sewer Development fee (sewer 13.08.490)
 16. Water System Development Fee (section 13.04.820)
- C. "City Manager" means the city manager or the city manager's designee.
- D. "City Treasurer" means the city treasurer or the city treasurer's designee.
- E. "Deferral Agreement" means an agreement that meets the criteria set forth in subsection section 18.52.030.
- F. "Developer" means a Person undertaking a Project.
- G. "Program" means the program established by this chapter for deferring payment of City Fees.
- H. "Project" means a project undertaken within the city for the purpose of commercial or residential development, other than a project undertaken by or for the city or another public agency.

18.52.020 Procedure for Deferring Payment of City Fees.

Notwithstanding any other provision of the Sacramento City Code, the city may defer payment of a City Fee in accordance with the following criteria and conditions:

- A. *Application.* A Developer who wishes to participate in the Program must submit a written application to the city's Development Services Department, using a city-approved form.

- B. *Approval.* A Developer may participate in the Program only if the City Manager approves the Developer's application. The City Manager shall not approve an application unless the Project meets all of the following requirements:
1. The Project is on a site within the city.
 2. All payments of taxes and assessments on the Project site are current.
 3. The Developer has all necessary land-use entitlements for the Project.
 4. The Developer passes any risk assessment the city conducts to determine the Developer's ability to pay all deferred City Fees when due. At the City Manager's discretion, the risk assessment may also cover the Developer's affiliates. The risk assessment may include but is not limited to the following criteria:
 - a. Neither the Developer nor any of the Developer's affiliates has had a foreclosure on any property during the four years preceding submission of the application.
 - b. Neither the Developer nor any of the Developer's affiliates has had a bankruptcy filing in the four years preceding submission of the application.
 - c. Neither the Developer nor any of the Developer's affiliates is subject to an outstanding civil judgment.
 6. The City Manager determines that deferral of City Fees on the Project will not endanger the public health, safety, or welfare.
 7. The Developer delivers to the City Attorney a Deferral Agreement that complies with section 18.52.030 and is signed by a person duly authorized to bind the Developer.
 8. The Developer has provided the city with evidence confirming to the City Manager's satisfaction that the Developer has satisfied all requirements for participation in the Program.

18.52.030 Deferral Agreement.

The Deferral Agreement sets forth the conditions under which the city will defer payment of City Fees. It must be in a form acceptable to the City Attorney and must include the following provisions:

- A. *Security.* Except as provided in subsection B of this section, the Developer shall secure payment of the deferred City Fees by providing the city with security in an amount equal to 115% of the deferred City Fees on the effective date of the Deferral Agreement:

1. The City Treasurer shall determine, from the following list, the type of security the Developer must provide:
 - a. A perfected security interest in a savings passbook or a certificate of deposit.
 - b. An irrevocable standby letter of credit.
 - c. A surety bond securing the Developer's performance under the Deferral Agreement.
 - d. The recording against the Project site of a senior deed of trust in the city's favor (i.e., all other deeds of trust and liens must be subordinate to the city's deed of trust to the extent allowed by law).
 - e. A perfected security interest in negotiable securities approved by the City Treasurer.
 - f. A reservation of funds by the Developer's construction lender. The city must be a party to an agreement, acceptable to the City Attorney and the City Treasurer in their sole discretion, under which the construction lender agrees to fund payment of the deferred City Fees if the Developer fails to pay the fees when due and the City Treasurer tenders a written demand for such funding.
 - g. Any other type of security that the City Attorney and the City Treasurer determine, in their sole discretion, to be comparable to the types of security described in subsections A.1.a through A.1.f of this section.
 2. All security that the Developer provides under subsection A of this section must be acceptable to the City Treasurer and the City Attorney in their sole discretion. The city shall not issue building permits for the Project until the Developer has provided the required security, and any building permit issued before the Developer has provided the required security is void. The Developer shall pay any recording, escrow, reconveyance, and other costs associated with the security.
- B. *Waiver of Security.* With respect to a Project or portion of a Project that consists solely of single-family residences, the City Treasurer may waive the security requirement of subsection A in this section if, after reviewing risk assessment conducted for the Project Developer under subsection B.4 of section 18.52.020, the City Treasurer determines that payment of the deferred City Fees will be adequately secured by requiring payment as a condition precedent for either of the following:
1. the city's issuing a certificate of occupancy or temporary certificate of occupancy;
or
 2. the city's conducting a final inspection (if the city does not issue certificates of occupancy for single-family residences).

- C. *Start of Construction.* The Developer shall begin to construct the Project within six months after the effective date of the Deferral Agreement. The City Manager shall determine when the Developer has begun construction. If the Developer does not begin construction within six months, then the deferred City Fees will become immediately due and payable unless the City Manager extends the six-month deadline, in writing, for an additional six months. The deferred City Fees will also become immediately due and payable if the building permits associated with the fees are declared void or otherwise invalidated.
- D. *Payment of Deferred City Fees.* The Developer shall pay the deferred City Fees as follows:
1. Except as provided in subsection D.2 of this section, the deferred City Fees associated with each building permit for the Project are due and payable when, for the building that the permit covers, the city issues a certificate of occupancy or a temporary certificate of occupancy or conducts a final inspection (if the city does not issue certificates of occupancy for such buildings). Payment of the fees, including any late fees and administrative fees assessed under subsection F of this section, is a condition precedent for issuing the certificate of occupancy or temporary certificate of occupancy or for conducting a final inspection.
 2. If the Developer secures payment of the deferred City Fees in accordance with subsection A.1.d of this section by recording a deed of trust against the Project site, then, at the City Manager's sole discretion, the Developer shall pay the deferred City Fees for each Project lot through escrow when the Developer sells the lot to a third party.
 3. Notwithstanding subsections D.1 and D.2 of this section, the Developer shall pay all deferred City Fees in full no later than three years after the effective date of the Deferral Agreement. The City Manager may extend this deadline up to one year if the City Manager determines that the Developer has made substantial progress on the Project.
 4. The Developer may pay deferred City Fees at any time before the payment dates set forth in subsections D.1, D.2, and D.3 of this section.
- E. *Payment Amount.* The amount of deferred City Fees to be paid is the amount of the fees on the effective date of the Deferral Agreement, except as follows:
1. The city will adjust the amount of the North Natomas Public Facilities Fee (subsection A.1 of section 18.24.050) in accordance with the adjustment procedure set forth in the North Natomas Financing Plan on the date of payment.

2. The city will adjust the amount of the Jacinto Creek Facilities Fee (subsection A.1 of section 18.28.050 and subsection B of section 18.28.110) in accordance with section 18.32.130.
 3. The city will adjust the amount of the Willowcreek Fee (subsection A.1 of section 18.32.050) in accordance with section 18.32.130.
 4. The city will adjust the amount of deferred City Fees under subsection E.1, E.2, or E.3 of this section only if the adjusted amount of the deferred fees is greater than the amount of the deferred fees on the effective date of the Deferral Agreement.
- F. *Late Payment.* If the Developer does not pay a deferred City Fee within three years after the date of the Deferral Agreement (four years if the City Manager extends the agreement in accordance with subsection D.3 of this section), then the Developer shall pay the deferred City Fees in the amount equal to the amount of the fees in effect at the time of payment, plus a late fee equal to 10% of the amount to be paid, plus the city's administrative fees for managing the Program.
- G. *Collection Expenses.* If the Developer does not pay deferred City Fees when due, then the Developer shall pay all expenses the city incurs to collect the fees, including but not limited to city staff time, third-party costs, and reasonable attorneys' fees and litigation costs.
- H. *Prevailing Wages.* Depending on the circumstances, the Developer's participation in the Program may cause the Developer's Project to be a "public work" for which the California Labor Code requires the payment of prevailing wages. The city makes no representation regarding the application of prevailing-wage laws to the Project, and the Developer should consult with the Developer's own legal counsel on this issue before participating in the Program.

18.52.040 Expiration of the Program.

The Program expires on December 31, 2009, and no new deferrals of City Fees may be approved after that date. Any deferrals approved on or before that date will remain in effect in accordance with the terms of this ordinance and the related Deferral Agreements.

Attachment 2 Development Impact Fee Deferral Program Guidelines

Fees imposed on development can pose a substantial financial burden on many projects, especially if developers must pay the fees up front, when building permits are issued. To help stimulate commercial and residential development, the City of Sacramento offers fee-financing and fee-deferral programs for development projects that meet certain criteria.

THE FEE-FINANCING PROGRAM

Established in 1994 and amended in 1996 and 2004, the fee-financing program is designed for larger commercial, industrial, and residential development projects. It enables developers to finance the payment of development fees over time. This is done by including the project within a community facilities district and levying special taxes. For more information on the fee-financing program, see the guidelines posted at: http://www.cityofsacramento.org/planning/public-improvement-financing/documents/Development_Fee_Financing_Program.pdf.

Developers and landowners should discuss the legal and financial aspects of the program with their advisors and consultants.

THE FEE-DEFERRAL PROGRAM

The fee-deferral program will allow a developer to defer payment of City controlled development impact fees, until the City issues a certificate of occupancy for the project or at close of escrow, depending on the option selected by the developer and approved by the City Manager or designee. The residential and commercial fee-deferral programs will be available until December 31, 2009.

Eligibility for the fee-deferral program

To participate in the fee-deferral program, a development project must satisfy the following requirements:

1. The project must be on property within the City of Sacramento.
2. All payments of taxes and assessments on the property must be current.
3. The applicant and partners must have all necessary land-use entitlements for the project.
4. Applicant and/or partners may be subject to a risk assessment, conducted by the City, that may include the following stipulations:

- (a) Applicant and/or affiliates have not had a foreclosure on any of its properties in the last four years.
 - (b) Applicant and/or affiliates have not had any bankruptcy filing in the past four years.
 - (c) Applicant and/or affiliates have no outstanding civil judgments.
5. Developer must pay all non-City controlled fees due, or have a fee deferral agreement with the governing agency for those fees, prior to the issuance of building permits covered by the fee-deferral agreement with the City.
6. The developer must enter into a fee-deferral agreement that provides as follows:
- (a) The developer must post security in an amount equal to 115% of the deferred fees. Security must be one of the following: (1) a perfected security interest in a savings passbook or a certificate of deposit, (2) an irrevocable standby letter of credit, (3) a surety bond securing the Developer's performance under the Deferral Agreement, (4) the recording against the project site of a senior deed of trust in the city's favor, (5) a perfected security interest in negotiable securities approved by the City Treasurer, and (6) a reservation of funds within the escrow account of the senior lender.
 - (b) The developer must begin construction within 6 months after the effective date of the fee-deferral agreement. Unless the City Manager or designee agrees to extend this deadline, the deferred fees will become immediately due and payable should the developer fail to begin construction on time.
 - (c) The City will not issue a temporary certificate of occupancy or a certificate of occupancy for the project until the developer has paid all deferred fees.
 - (d) The developer must pay all deferred fees no later than the earlier of the following:
 - (1) Certificate of Occupancy
 - (2) Single Family Residential: Close of escrow of each lot with appropriate security.
 - (3) Commercial and Residential: Within 36 months after the effective date of the fee-deferral agreement, except that the City Manager (or the City Manager's designee) may extend this deadline on a one time basis for up to one year. If not paid within the initial 36 months of the fee deferral and without City Manager approval, the Developer shall pay the deferred City Fees in the amount equal to the amount of the fees in effect at the time of payment, plus a late fee equal to 10% of the

amount to be paid, plus the city's administrative fees for managing the Program.

How the program works

Developers who wish to participate in this program must submit an application to the Development Services Department, which must be approved by the City Manager or designee.

The City will not issue building permits for the project until the developer paid all non-City controlled fees due, and has an approved fee deferral agreement accompanied by security acceptable by the City.

The City will defer fees after the developer has entered into a fee-deferral agreement with the City and posted the required security.

If the Developer does not pay deferred City Fees when due, then the Developer shall pay all expenses the city incurs to collect the fees, including but not limited to city staff time, third-party costs, and reasonable attorneys' fees and litigation costs.

If there are inconsistencies within the guidelines and other program documents, the Ordinance is the controlling document.

Fees eligible for deferral

City Controlled Development Impact Fees subject to the approval of the City Manager.

1. Downtown Transportation Fee
2. Railyards Transportation Fee
3. Richards Boulevard Transportation Fee
4. Railyards Public Facilities Fee
5. Richards Boulevard Public Facilities Fee
6. Jacinto Creek Facilities Fee
7. North Natomas Public Facilities Fee
8. North Natomas Transit Fee
9. North Natomas Public Land Acquisition Fee
10. North Natomas Regional Park Land Acquisition Fee
11. Park Development Impact Fee
12. Building Excise Tax
13. Willowcreek Fee
14. Sewer Development Fee
15. Combined Sewer Development Fee
16. Water System Development Fee

The amount of deferred fees to be paid is the amount of the fees on the effective date of the Deferral Agreement, except the North Natomas Public Facilities Fee, Jacinto Creek Facilities Fee and Willowcreek Fee will be adjusted to remain consistent with their respective Area Financing Plans.

Fees not eligible for deferral

Fees not specifically listed above as eligible may not be deferred. The fees ineligible for deferred include but are not limited to the following:

- City Controlled non-impact fees
- Fees the City collects for non-City agencies.

**Attachment 3
Eligible Fees**

1. Downtown Transportation Fee
2. Railyards Transportation Fee
3. Richards Boulevard Transportation Fee
4. Railyards Public Facilities Fee
5. Richards Boulevard Public Facilities Fee
6. Jacinto Creek Facilities Fee
7. North Natomas Public Facilities Fee
8. North Natomas Transit Fee
9. North Natomas Public Land Acquisition Fee
10. North Natomas Regional Park Land Acquisition Fee
11. Park Development Impact Fee
12. Building Excise Tax
13. Willowcreek Fee
14. Sewer Development Fee
15. Combined Sewer Development Fee
16. Water System Development Fee