



REPORT TO COUNCIL City of Sacramento

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Staff Report
December 2, 2008

Honorable Mayor and
Members of the City Council

Title: Establishment of South Natomas Community Infrastructure Fund Deferral Program as a Part of an Economic Stimulus Strategy

Location/Council District: Council District 1

Recommendation: Adopt a **Resolution** for the establishment of a South Natomas Community Infrastructure Fund Fee Deferral Program as part of an Economic Stimulus Strategy.

Contact: David Kwong, Planning Manager, (916) 808-2691, Janis Franklin, Program Specialist, (916) 808-7705 and William Thomas, Development Services Director, (916) 808-1918

Presenters: David Kwong, Planning Manager

Department: Development Services

Division: Administration

Organization No: 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 continuing to develop 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 South Natomas Community Infrastructure Fund (SNCIF) Fee Deferral Program as a

component of an Economic Stimulus Strategy.

The proposed SNCIF Fee Deferral Program is modeled after the recently enacted Development Fee Deferral Program and allows developers to defer the payment of SNCIF 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 SNCIF 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.

The South Natomas Community Infrastructure Fund (SNCIF) was established in 1993 under development agreements whose terms ran from Jan 1983 to Jan 1993 (Metro Center, Natomas Corporate Center, and Gateway Center). It covered 2.4 million S.F. of office space, 0.5 million S.F. of manufacturing/research/development, 146,000 S.F. retail and KVIE. 456 dwelling units were exempted in the Metropolitan Center. SNCIF rate was about \$2.00/sqft (\$1.66 plus inflation), and included broad discretion in project funding. After 1993, any special permit for a SNCIF property was required to sign agreement to pay SNCIF fees at the FBA rate. The FBA was established in March 1990 and covers all of South Natomas except as specifically exempted. The FBA rate is \$3.76 per gross square foot for non-residential; \$2,230/du single family; \$1,563/du multiple family and covers specified projects and dollar amounts to fund those projects. Because of subsequent state legislation (e.g., AB 1600) regarding nexus requirements, no changes have been made to the project list, project costs, boundaries, or fees.

Environmental Considerations:

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, establishing a South Natomas Community Infrastructure fund 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 SNCIF 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 SNCIF Fee Deferral Program was brought before the Development Oversight Commission (DOC) for review and comment on December 1, 2008. The DOC supported the establishment of the SNCIF Fee Deferral Program.

Rationale for Recommendation: The proposed SNCIF 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. In addition, in October, 2008 City Council adopted a Development Impact Fee Deferral Program. The fee deferral programs are 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 SNCIF Fee Deferral Program defers a specific city controlled impact fee. Fees that impact the City's General Fund will not be eligible for deferral.

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: 
David Kwong
Planning Manager

Approved by: 
William Thomas
Development Services Director

Recommendation Approved:


Ray Kerridge
City Manager

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RESOLUTION NO. 2008-xxx

Adopted by the Sacramento City Council

ESTABLISHING A TEMPORARY PROGRAM FOR DEFERRING PAYMENT OF SOUTH NATOMAS COMMUNITY INFRASTRUCTURE FUND FEES ON DEVELOPMENT PROJECTS

Background

- 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 the South Natomas Community Infrastructure Fund fee in accordance with the criteria and conditions set out in Section 1 of this resolution.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

Section 1.

The Sacramento City Council hereby authorizes the deferral of the South Natomas Community Infrastructure Fund fees based on the following definitions and criteria:

Section 2. Definitions.

The following definitions apply in this program:

- A. "City Attorney" means the city attorney or the city attorney's designee.
- B. "SNCIF Fee" means the South Natomas Community Infrastructure Fund Fee.

- 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 Section 4. Deferral Agreement.
- F. "Developer" means a Person undertaking a Project.
- G. "Program" means the program established by this Resolution for deferring payment of SNCIF Fees.
- H. "Project" means a project undertaken within the city for the purpose of commercial development, covered by specific South Natomas development agreements, including Metro Center, Natomas Corporate Center and Gateway Center, other than a project undertaken by or for the city or another public agency.

Section 3. Procedure for Deferring Payment of SNCIF Fees.

Notwithstanding any other provision of the Sacramento City Code, the city may defer payment of a SNCIF 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 covered by specific South Natomas development agreements, including Metro Center, Natomas Corporate Center and Gateway Center.
 - 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 deferred SNCIF 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 SNCIF 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 4 of this Resolution 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.

Section 4. Deferral Agreement.

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

- A. *Security.* The Developer shall secure payment of the deferred SNCIF Fees by providing the city with security in an amount equal to 115% of the deferred SNCIF 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. *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 SNCIF 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 SNCIF Fees will also become immediately due and payable if the building permits associated with the fees are declared void or otherwise invalidated.
- C. *Payment of Deferred SNCIF Fees.* The Developer shall pay the deferred SNCIF Fees as follows:
 1. Except as provided in subsection D.2 of this section, the deferred SNCIF 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 SNCIF 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 SNCIF 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 SNCIF 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 SNCIF Fees at any time before the payment dates set forth in subsections D.1, D.2, and D.3 of this section.
 1. *Payment Amount.* The amount of deferred SNCIF Fees to be paid is the amount of the fees on the effective date of the Deferral Agreement.
- E. *Late Payment.* If the Developer does not pay a deferred SNCIF 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 SNCIF 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.
- F. *Collection Expenses.* If the Developer does not pay deferred SNCIF 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.
- G. *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.

Section 5: Expiration of the Program.

The Program expires on December 31, 2009, and no new deferrals of SNCIF 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 resolution and the related Deferral Agreements.