



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 1/10/2012

**Report Type:** Consent

**Title: Appeal: Park Development Impact Fee Refund Request Denial**

**Report ID:** 2012-00040

**Location:** District 3

**Recommendation:** Pass a Resolution 1) causing the appeal of the Parks and Recreation Director's decision to deny a request for the refund of park development impact fees paid for a building permit to be heard by a City Council appointed administrative hearing examiner, and 2) referring any future appeals of the Director's decision concerning a park development impact fee protest to an administrative hearing examiner.

**Contact:** Mary de Beauvieres, Principal Planner, (916) 808-8722; J.P. Tindell, Park Planning & Development Manager, (916) 808-1955, Department of Parks and Recreation

**Presenter:** Mary de Beauvieres, Principal Planner, (916) 808-8722; J.P. Tindell, Park Planning & Development Manager, (916) 808-1955, Department of Parks and Recreation

**Department:** Parks & Recreation Department

**Division:** Park Development Services

**Dept ID:** 19001121

### **Attachments:**

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- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Exhibit A (Director's Decision)
- 5-Exhibit B (Notice of Appeal)

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### **City Attorney Review**

Approved as to Form  
Jeffrey C. Heeren  
12/22/2011 3:11:44 PM

### **City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
12/19/2011 1:14:45 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Jim Combs - 12/21/2011 5:26:29 PM



## Description/Analysis

**Issue:** On September 22, 2011, the owner of the property at 545 36<sup>th</sup> Street in East Sacramento submitted a request for the refund of park development impact fees paid on a residential building permit. City Code section 18.44.140 outlines the process for the protest of park development impact fees. After a thorough staff investigation and an informal hearing before the Parks and Recreation Director, the refund request was denied. The basis of denial is described in the “Director’s Decision – Request for a Refund of Park Development Impact Fees – 545 36<sup>th</sup> Street” letter dated October 31, 2011 (Exhibit A). On November 10, 2011, the owner filed an appeal of the denial (Exhibit B).

Resolution 92-091 authorizes the City Clerk to automatically refer certain appeals which are anticipated to entail a lengthy fact finding process to an administrative hearing examiner without further City Council action. This Notice of Appeal is the first to be received by the City Clerk concerning park development impact fees. City staff recommends City Council’s action include an automatic referral of any future appeals concerning park development impact fees to an administrative hearing examiner.

**Policy Considerations:** City Code section 18.44.140 establishes an informal hearing process for the Director of the Parks and Recreation Department to consider park development impact fee protests. If the aggrieved party is not satisfied with the Director’s decision, the party may appeal the decision to the City Council. City Code section 1.24.060 allows City Council to refer administrative appeals to a hearing examiner.

Appeals concerning park development impact fees typically include a lengthy fact finding process which would be more appropriately accommodated by a formal hearing before an administrative hearing examiner. Staff is also recommending that City Council cause the City Clerk to automatically refer any future appeals pertaining to park development impact fees to a hearing examiner.

### **Environmental Considerations:**

**California Environmental Quality Act (CEQA):** Under the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.), continuing administrative activities do not constitute a “project” as defined in Section 15378 of the CEQA Guidelines and are therefore exempt from review.

**Sustainability:** Not applicable.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** Staff anticipates that the issues raised in this Notice of Appeal will involve a lengthy fact finding process. Therefore, staff recommends that the City Council refer this appeal of the Director's Decision to an administrative hearing examiner. Future appeals of the Director's Decision will also likely involve a lengthy fact finding process and should be automatically referred to an administrative hearing examiner to speed the process for the aggrieved party. The administrative hearing examiner's decision shall be final.

**Financial Considerations:** The administrative hearing examiner appointed by the City Council charges the City of Sacramento for the services of hearing various appeals on an hourly basis. The anticipated cost of referring this appeal to be heard by an administrative hearing examiner is not expected to exceed \$700. The funds are available in Fund 3204, the Park Development Impact Fee Fund Contingency.

**Emerging Small Business Development (ESBD):** Not applicable. No goods or services are being purchased under this report.

## Background

The Park Development Impact Fee was established by adoption of Ordinance 99-044 on August 17, 1999, and is codified in Sacramento City Code Chapter 18.44. The Park Development Impact Fee provides funding for park facilities in neighborhood and community parks. The fee is assessed upon landowners developing residential property on a per unit basis, and on nonresidential property on a square footage basis. The fee is paid prior to issuance of a building permit. The fee amount was first established in the *Park Development Impact Fee Nexus Study*; adopted on August 17, 1999 (Resolution 99-474). The Nexus Study has been amended several times (in 2002 and 2004). In addition, City Code section 18.44.120 allows the automatic annual adjustment of the fee based on the construction cost index for the San Francisco region. The automatic fee adjustment occurs on July 1 of each year.

On March 25, 2011, owners of the property at 545 36<sup>th</sup> Street submitted an application for a building permit comprised of a 779 square foot addition to the first floor, a 691 square foot addition to the second floor, a 344 square foot attached garage, 85 square foot covered entry and a remodel of the kitchen for an existing residence. On July 26, 2011, a Building Inspector visiting the site found that the original residence had been removed, leaving only the foundation, a few floor joists and utility connections. The contractor was informed that a new building permit would be necessary before any further inspections could occur. City staff determined that the new building permit, reflecting the project's change in scope, was subject to the payment of park development impact fees; the fees were collected prior to issuance of the building permit.

The homeowner filed a written request for a fee refund in accordance with City Code Section 18.44.140. The request was considered on October 18, 2011 at an informal hearing before the Director of the Parks and Recreation Department. The Director's decision letter, included as Exhibit A to the resolution, outlines the basis for the denial of the request to refund the fees. On November 10, 2011, the homeowner filed an appeal of the Director's decision; a copy of the Notice of Appeal is included in this report as Exhibit B of the resolution.

City Code Chapter 18.44 outlines a process to be used if a landowner protests payment of a park development impact fee by requesting a reduction, adjustment or waiver of the fee. Such a request must be based upon the absence of a reasonable relationship (nexus) between the impacts of the landowner's project and either the amount of the fee charged or the type of park facility to be financed, or both. A park development impact fee protest is first considered by the Director of the Parks and Recreation Department at

an informal hearing. The Director's decision is rendered in a letter. If the aggrieved party chooses, he/she may appeal the decision of the Director to the City Council, pursuant to the administrative appeal process outlined in Chapter 1.24 of City Code. In lieu of hearing the appeal, particularly when the subject of the appeal may involve a lengthy fact finding process, City Council may refer the appeal to a hearing examiner for a decision. The hearing examiner's decision shall be considered final.

On February 11, 1992, City Council defined certain categories of appeal which routinely involve a lengthy fact finding process. These appeals are routinely scheduled before a hearing examiner without further action of the City Council. This is the first appeal of payment of the park development impact fee to come before City Council. It entails a lengthy fact finding process and staff recommends that all future appeals of the Director's decision concerning the park development impact fee also be referred by the City Clerk to a hearing examiner without further City Council action.



## RESOLUTION NO. 2012-

Adopted by the Sacramento City Council

### **A RESOLUTION CAUSING THE APPEAL OF THE PARKS AND RECREATION DIRECTOR'S DECISION TO DENY A REQUEST FOR THE REFUND OF PARK DEVELOPMENT IMPACT FEES TO BE HEARD BY A CITY COUNCIL APPOINTED ADMINISTRATIVE HEARING EXAMINER, AND REFERRING ANY FUTURE APPEALS OF THE DIRECTOR'S DECISION CONCERNING PARK DEVELOPMENT IMPACT FEES TO AN ADMINISTRATIVE HEARING EXAMINER**

#### **BACKGROUND**

- A. Sacramento City Code Section 18.44.140 allows any person aggrieved by a decision of the Director of Parks and Recreation in considering a protest of the payment of park development impact fees to appeal the decision to the City Council.
- B. Sacramento City Code Sections 1.24.050 and 1.24.060 provide that in lieu of hearing an appeal, the City Council may cause an appeal to be heard by a hearing examiner designated by the City Council whenever it determines from an examination of the notice of appeal that a hearing on the subject of the appeal may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before an administrative hearing examiner.
- C. An appeal of the Parks and Recreation Director's decision to deny a request to reduce, adjust or waive the payment of park development impact fees is not included in the categories of appeal set forth in Resolution 92-091. Resolution 92-091 authorizes the City Clerk to automatically refer certain appeals which are anticipated to entail a lengthy fact finding process to an administrative hearing examiner without further City Council action.
- D. An examination of the Notice of Appeal filed by the property owner, Laura Sainz, regarding the denial of a request for the refund of park development impact fees paid on a residential building permit for 545 36<sup>th</sup> Street, reveals that the subject appeal may involve a lengthy fact finding process more appropriately accommodated by an administrative hearing examiner.

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

- Section 1. The City Clerk shall refer the appeal filed by the property owner, Laura Sainz, regarding the denial of a request for the refund of park development impact fees paid on a residential building permit at 545 36<sup>th</sup> Street to an administrative hearing examiner.
- Section 2. The City Clerk shall refer to an administrative hearing examiner without further City Council action, appeals from a Decision by the Director of Parks and Recreation concerning the reduction, adjustment or waiver, or portion thereof, of the payment of park development impact fees.

**Table of Contents:**

- Exhibit A - Director's Decision – Request for a Refund of Park Development Impact Fees – 545 36<sup>th</sup> Street
- Exhibit B - Notice of Appeal

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DEPARTMENT OF PARKS  
AND RECREATION

OFFICE OF THE DIRECTOR  
James L. Combs

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CALIFORNIA

915 I STREET, 5<sup>th</sup> Floor  
SACRAMENTO, CA  
95814

916-808-5200  
916-808-7643 FAX

October 31, 2011

Ms. Laura Sainz  
545 36<sup>th</sup> Street  
Sacramento, CA 95814

Subject: **Director's Decision**  
**Request for a Refund of Park Development Impact Fees - 545 36<sup>th</sup> Street**

Dear Ms. Sainz:

This letter is to notify you of my decision following the October 18, 2011, hearing. I have considered your request to refund the park development impact fees paid in connection with your residential construction project currently underway at 545 36<sup>th</sup> Street in Sacramento and I find that there is no basis for a refund of the Park Development Impact Fee. The development consists of the construction of a single family residence on a lot that previously contained a single family residence. According to City Building Department records, the previous building was demolished to the foundation, floor joists and utility connections; new construction for all residential improvements above the floor is currently underway.

At the hearing and in your September 22, 2011 memo, you explained two main arguments to support your refund request. The first was that your project should not be considered new development and should instead be considered an addition to an existing building. The second argument was that there was no legal nexus to impose the fee because there would be no additional persons residing on the property after the construction is complete.

You also mentioned the Ryan DeVore, the City's Chief Building Official had determined that your project could be considered an addition pursuant to the California Residential Code; however, that is a separate issue for the purpose of whether park development impact fees apply to your project and does not affect this determination. Each argument will be addressed separately below.

**Is your project an addition to an existing building?**

No. Section 17.16.010 of City Code contains the following definitions pertinent to your situation:

*Building: Any structure having a roof supported by columns or walls.*

*Structure: Anything constructed or erected which required location on the ground or attached to something having location on the ground, including accessory buildings, signs or billboards, but not including fences or walls as fences (See 'building').*

The term 'building' is typically applied to residential uses, while 'structure' is applied to nonresidential uses like garages or gazebos, but not to residential dwellings. This is supported by the definition of 'dwelling unit' as contained in Section 18.44.010 of City Code. A 'dwelling unit' is defined as "**any building or portion of a building used or designed for use as a residence by an individual or any group of individuals living together as a family, excepting therefrom any unit rented or leased for temporary residence for fewer than thirty (30) days, such as a motel or hotel room (which shall be considered a commercial use)**".

This department has a consistent, long-held interpretation of City Code that considers new residential construction to include cases like yours where a residential building has been demolished to the point that greater than 50% of the interior and/or exterior walls (combined) have been removed with the intent of reconstruction or expansion of the original building. This interpretation of the definition and the definition contained in Section 17.16.010 of City Code both depend upon the presence of walls in order to qualify as a building. Without walls there could be no building. The 50% wall retention definition was used as the basis of assigning fees under your original Building Permit (RES-1102901, issued March 20, 2011), and was the reason that your initial Building Permit did not require the payment of park development impact fees.

When, on July 26, 2011, the Building Inspector noticed that the existing walls had been removed leaving only the foundation, floor joists and utility connections, he informed your contractor that the scope of work had changed for the project and that no more inspections would be conducted until you were issued a new Building Permit. When your contractor removed the walls, what remained could no longer be considered a 'building'. Instead it was a non-residential structure consisting of a foundation, floor joists and utility connections. Any action taken to make it habitable would be considered new residential construction.

In accordance with Section 18.44.060 of City Code, the park development impact fees apply to the following types of development:

1. For residential property:
  - a. The construction on the property of a **new building or structure containing one or more dwelling units.**
  - b. The construction on the property of alterations or additions to an existing building or structure that adds one or more dwelling units to such existing building or structure.
  - c. The change in use of an existing building or structure on the property from a previous nonresidential use to a residential use, provided that the landowner shall be entitled to a credit against fees in the amount of fees that were actually paid for such previous nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 18.44.120 of this chapter;

In reviewing your application prior to issuance of your current Building Permit (RES-1109021, issued September 9, 2011), your project was determined to be subject to park development impact fees in accordance with Section 18.44.060.1.a. above. Because you no longer had a building on the property, your proposed improvements would entail construction of a new building containing a dwelling unit and

therefore, obligated you to pay the park development permit fee prior to issuance of that building permit.

City Code section 18.44.070(A) provides in part that “[t]he following shall be exempted from payment of the park fee established by this chapter:

- a. Alterations, renovations, or expansion of an existing residential building or structure where no additional dwelling units are created and the use is not changed; provided, however, that the expansion or intensification of use of an existing commercial or industrial building or structure shall not be exempt from the fees established in this chapter. . . . ;
- b. The replacement of a destroyed or partially destroyed or damaged building or structure with a new building or structure of the same size and use; . . . .”

If you were merely altering or renovating the building which previously occupied the site, then your proposed project would, in fact, be exempt from the payment of park development impact fees pursuant to City Code; however, once the walls were removed you had entirely removed the ‘building’. What remained was a nonresidential structure consisting of a foundation, floor joists and utility connections. Any subsequent construction is considered ‘new development’. In addition, you are completely replacing it for a reason other than it being destroyed or partially destroyed or damaged. As a result, your proposed project does not fall under any of the exemptions provided by City Code section 18.44.070.

“New development” is not limited to the addition of improvements occurring on vacant, previously undeveloped property. Instead, the term “development” includes the construction of all residential buildings. If the term “development” was not intended to include replacement of residential buildings, then there would be no need for the exemptions set forth in City Code section 18.44.070.

**Is there a nexus for the City to impose the fee?**

Yes. The City’s first *Park Development Impact Fee Nexus Study* was adopted on August 17, 1999 (Resolution 99-474). It has been updated in 2002 (Resolution 2002-230; dated April 30, 2002) and in 2004 (Resolution 2004-693; dated August 24, 2004). It has not been updated recently. In the 1999 Study and all subsequent studies, a reasonable relationship has been established between the various classes of development to which it is applied, in your case construction of a single-family residence, and the City’s park system. Because new development places a strain on the City’s park system, that impact is mitigated through the payment of a park development impact fee. Pursuant to Section 18.44.020 the fee provides funds that are necessary to design, construct and install park facilities required to meet the needs of and address the impacts caused by new development. The funds are restricted to neighborhood- and community-serving parks. The park development impact fee considers the potential impact the new structure will have on the City’s parks during the lifetime of the structure, not just the actual impact that your use of the structure will have on the City’s park system.

The authority to collect park development impact fees comes from the Mitigation Fee Act (Government Code section 66000, et seq.). It is a legislative mandated, generally applicable fee to address the impacts associated with classes of development. It is imposed mechanically using a fixed formula, without consideration of the individual characteristics of each applicant’s particular situation. Once it was determined that your project consisted of the new construction of a single-family residential building, which is one of the classes of development to which the park development impact fee applies, the fee was automatically calculated for your Building Permit.

Laura Sainz  
545 36<sup>th</sup> Street  
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Therefore, after careful consideration of the factors set forth in City Code chapter 18.44.140(E), I find that there is no basis to refund to you the park development impact fees paid by you on Building Permit RES-1109021. Please be advised that this is a final decision and it is not appealable, except as provided in subsections (G) and (H) of Sacramento City Code section 18.44.140.

**Your Right to Appeal this Decision:** If you are dissatisfied with my decision, you may appeal it to the City Council by filing a written notice of appeal with the City Clerk. This appeal must be filed with the City Clerk within ten calendar (10) days after the date of the mailing of the Director's decision as contained herein. The written appeal shall comply with the provisions of Chapter 1.24 of the Sacramento City Code (a copy of which is enclosed) which outlines the procedure for filing an appeal. There is no fee associated with filing an appeal of this decision.

Upon receipt of a complete notice of appeal, the City Clerk shall schedule the item to be heard before the City Council and shall notify you of the hearing date. When the City Council considers the notice of appeal, it may either hear the item at that time or refer the appeal for consideration by a hearing examiner designated by the City Council. The time and place of the initial hearing before the hearing examiner shall be fixed by the City Council.

If you have questions about the City Code requirements, please contact Mary de Beauvieres, Principal Planner at 808-8722.

Sincerely,



James L. Combs, Director

JLC:mdb

Enc. Chapter 1.24 of City Code

Cc: J. P. Tindell  
J. Heeren  
M. de Beauvieres  
S. Brown (Council District 3)  
S. Concolino

**Sacramento City Code**

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[Title 1 GENERAL PROVISIONS](#)

**Chapter 1.24 ADMINISTRATIVE APPEALS**

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**Article I. Appeals to Council**

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**1.24.010 Procedure for filing appeal.**

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Any person who wishes to appeal to the city council a decision, ruling, order, rule or directive from any officer, board or commission of the city when said action is made subject to appeal to the city council by law or by ordinance, shall follow the procedures herein set forth:

A. The appellant shall file with the city clerk a notice of appeal within the time limits, if any, provided by law or by ordinance, for the filing of such an appeal. The notice shall specify the name, mailing address and telephone number, if any, of the appellant and such other information required by law or by ordinance to be provided with the appeal.

B. The appellant shall attach to or incorporate within the notice of appeal a written statement specifying in detail the grounds for the appeal.

C. The notice of appeal shall be accompanied by a nonrefundable fee established by resolution of the city council, unless another fee is specified elsewhere in the code or by resolution of the city council. (Prior code § 2.05.400)

**1.24.020 Rejection of notice of appeal.**

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The city clerk shall reject for filing any notice of appeal that does not substantially comply with the requirements of Section 1.24.010 of this chapter. Written notice of rejection shall be given to the appellant by the city clerk at the address, if any, specified in the notice of appeal. The notice of rejection shall specify the reason or reasons for the rejection of the appeal, and the appellant shall be afforded the opportunity to correct the defect or defects in said notice within five days following the date of rejection. (Prior code § 2.05.410)

**1.24.030 Transmitting notice of appeal to council.**

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If the matter under appeal is one wherein law or ordinance requires that the city clerk fix the date of the hearing before the city council, the clerk shall fix said date and shall transmit the notice of appeal to the council together with notice of the date when said appeal will be heard by the council. If the matter under appeal is one wherein law or ordinance requires that the city council fix the hearing date, the clerk shall transmit the notice of appeal to the council with the request that a hearing date be fixed by the city council. (Prior code § 2.05.420)

**Article II. Appointment of Hearing Officer— Waiver of Appeal Fees**

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**1.24.040 Applicability.**

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The provisions contained in this chapter shall not apply to appeals from any decision or action taken by the planning commission, the design commission or the preservation commission, or any appeal taken wherein the council is itself required by a statute of the state of California to conduct the appellate hearing. (Ord. 2006-065 § 1: prior code § 2.06.430)

**1.24.050 Appointment of hearing examiner.**

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In lieu of hearing any appeal filed pursuant to Section 1.24.010 of this chapter, the city council, upon making the determination set forth in Section 1.24.060(A) of this chapter, may cause the appeal to be heard by a hearing examiner designated by the council. This section shall not

apply to any appeal to the city council from a decision or action taken by the planning commission, the design commission or the preservation commission, or any appeal taken wherein the council is required by a statute of the state of California to conduct the appellate hearing itself. (Ord. 2006-065 § 2: prior code § 2.06.440)

**1.24.060 Criteria for appointment.**

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A. A hearing officer may be appointed by the city council whenever, in its sole discretion, it determines from an examination of the notice of appeal that a hearing on the subject of the appeal may involve a lengthy fact finding process which could be more appropriately accommodated by a formal hearing before a hearing examiner. The appointment of a hearing examiner may be made at any time prior to the time that the city council commences a hearing on the matter under appeal and may be made with or without prior notice to the appellant. The time and place of the initial hearing before the hearing examiner shall be fixed by the city council.

B. The city council may by resolution delineate one or more categories of appeal which routinely involve a lengthy fact finding process, and instruct the city clerk to schedule such appeal hearings before a hearing examiner without further action of the city council. The resolution shall include criteria for the selection of a hearing examiner. The city clerk shall inform the city council of each hearing scheduled pursuant to this subsection.

C. The city council may, at any time before a hearing examiner commences a hearing on a matter under appeal, with or without prior notice to the appellant, by motion rescind the appointment of the hearing examiner and schedule the matter under appeal for hearing before the council. (Prior code § 2.06.450)

**1.24.070 Standard of review.**

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A hearing examiner appointed pursuant to Section 1.24.050 of this chapter shall have all the rights, duties, powers and privileges that would be vested in the city council if the council were conducting the hearing itself; provided, however, a hearing examiner shall have no power to declare an ordinance unenforceable or unconstitutional. The examiner's decision shall be based upon the criteria specified by ordinance or by law, that would have governed the decision of the city council, and may include any condition that might have been lawfully imposed by the city council. The hearing before the hearing examiner shall be de nova. (Prior code § 2.06.460)

**1.24.080 Procedure for hearing.**

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The city council may adopt rules of procedure governing the manner in which appeals are heard by hearing examiners. In the absence of such rules, the hearing examiner shall follow, as nearly as practicable, the procedures that the city council would have followed in conducting the hearing if it had not appointed the hearing examiner to do so. (Prior code § 2.06.470)

**1.24.090 Effect of decision.**

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A decision of a hearing examiner appointed pursuant to Section 1.24.050 of this chapter shall be final and no appeal may be taken thereon to the city council. (Prior code § 2.06.480)

**1.24.100 Waiver of appeal fees.**

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A. Except as provided in Section 1.24.040 of this chapter, the city clerk may waive the fee required for filing an appeal as specified in Section 1.24.010 of this chapter or in any other applicable city code section if the appellant meets the requirements of this section.

B. The party seeking the fee waiver must be the real, and not nominal, party in interest, and the appellant shall not be granted a waiver if there are any interested parties financially capable of paying the fee. No person shall be granted more than one waiver per six months.

C. Subject to the limitations of subsection B of this section, waiver of the fee shall be granted by the city clerk if the applicant declares under penalty of perjury and the city clerk determines that the applicant is receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 through 12205.2 of the Welfare and Institutions Code), the Aid to Families with Dependent Children (AFDC) program (42 United States Code 601 through 644), the Food Stamp program (7 United States Code 2011 through 2027) or Section 17000 of the Welfare and Institutions Code or the appellant declares under penalty of perjury that their monthly income is one hundred twenty-five (125) percent or less of the current monthly poverty threshold annually established by the Community Services Administration pursuant to Section 625 of the Economic Opportunity Act of 1964, as amended.

In addition the city clerk may waive the appeal fee if (1) the applicant has declared under penalty of perjury that the appellant cannot pay the appeal fee without using money needed for the common necessities of life, and (2) the city clerk determines that the statements in the declaration are true. The clerk may require the appellant to furnish such financial information as the clerk deems necessary to make a decision.

The decision of the city clerk on the fees waiver shall be final and conclusive and there shall be no appeal to a city body or official from said decision.

D. An appellant desiring waiver of an appeal fee shall apply for the waiver at the same time as the appeal is filed. Said appellant shall furnish within two working days, the information requested by the city clerk to substantiate the waiver request. If the information requested is not furnished within said two working days, the city clerk may deny the fee waiver request. After an appellant requests waiver of the appeal fee, the applicable dates or time periods for hearing the appeal shall be tolled until the city clerk decides the fee waiver request.

E. Any person who willfully provides the city clerk with false statements of material facts is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of a period of not more than six months, or by both such fine and imprisonment. (Prior code § 2.06.490)

**Article III. Judicial Review**

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**1.24.110 Judicial review.**

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A. Except as set forth in subsections B and C of this section, any judicial action taken by the appellant in any manner to set aside, annul or vacate any decision of the city council or a hearing officer appointed pursuant to Section 1.24.050 of this chapter relating to the revocation or denial of an application for a permit, license or other entitlement shall be filed within the time limits prescribed in Code of Civil Procedure Section 1094.6 and notice of such time limit shall be given to the appellant by the city clerk.

B. Judicial review of any action taken by the planning commission or the city council relating to any matter arising under the comprehensive zoning code shall be governed by the thirty (30) day time limitation contained in Section 18-M thereof. Judicial review of any decision of the city council or a hearing officer, undertaken pursuant to Sections 2.48.110, 2.124.2330, 5.04.190, 5.24.140, 5.80.160, 8.04.210, 8.16.070, 8.96.250,

8.100.830, 15.68.120 and 15.76.070 of this code as said sections now exist or as they may be amended or renumbered, or any other section specifying a time limitation contained in any such section. In the event that this subsection shall be determined by a court of competent jurisdiction to be invalid, then the time limitation for judicial review of such actions shall be governed by subsection A of this section.

C. Judicial review of any appeal decision of the city council or of a hearing officer which is not a "decision" as that term is defined in Code of Civil Procedure Section 1094.6, shall be taken by petition for writ of mandate filed not later than the thirtieth day following the date on which the action becomes final. In the event that this subsection shall be determined by a court of competent jurisdiction to be invalid, then the time limitation for judicial review of such actions shall be governed by subsection A of this section. (Prior code § 2.07.500)

#### **Article IV. Administrative Appeal of Fees and Charges**

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##### **1.24.115 Definitions.**

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For purposes of this article, the following definitions shall apply:

"City manager" means the city manager or the manager's designee. (Ord. 2010-036 § 1)

##### **1.24.120 Administrative appeal of fees and charges.**

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A. In the case of a fee or charge which by law may not exceed the estimated reasonable cost of providing the service for which it is imposed, any person or entity who contends that a fee or charge imposed upon the person or entity by or on behalf of the city exceeds the estimated reasonable cost of providing the service for which the fee or charge is imposed, may appeal the fee or charge, or the amount thereof, according to the procedure set forth in this article.

B. The administrative hearing available under this article is intended to be an informal proceeding. Discovery shall not be permitted and the hearing need not be conducted according to technical rules relating to evidence and witnesses. The procedure set forth in this article shall not apply to fees or charges for which a different appeal procedure has been established by state law or city ordinance or resolution.

C. For fees and charges to which this article applies, failure to appeal as permitted by this article shall constitute a failure to exhaust available administrative remedies, and shall bar any further or other review or appeal. (Ord. 2010-036 § 1; prior code § 1.24.800)

##### **1.24.130 Payment of fee or charge—Filing of appeal and payment of appeal fee.**

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Any person or entity desiring to assert an appeal pursuant to this article shall first pay the full amount of the disputed fee or charge to the city, which may be paid under protest. A written appeal including the grounds for the appeal and any written material which will be used to support the appeal, shall be filed with the city clerk not later than fifteen (15) calendar days after payment of the disputed fee or charge. The appeal shall be heard by the city manager. (Ord. 2010-036 § 1; prior code § 2.08.810)

##### **1.24.140 Hearing and decision.**

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A. The city manager shall schedule a hearing with no less than ten (10) calendar days written notice to the appellant. The hearing shall be held within sixty (60) calendar days after the date the appeal is filed with the city clerk, unless it is postponed pursuant to Section 1.24.150 of this chapter. The appellant and any representative of the appellant may attend the hearing and may present any evidence relevant to the appeal. The city manager shall decide the appeal considering evidence from the appellant, from the city department imposing the fee or charge,

and from other persons who may have personal knowledge of relevant information concerning the fee or charge. The proceedings shall be recorded.

B. The appellant shall have the initial burden to establish a prima facie case that the fee or charge exceeds the estimated reasonable cost of providing the service for which it is imposed. In those cases where the appellant establishes a prima facie case, the burden shall shift to the city to establish by a preponderance of the evidence that the fee or charge does not exceed the estimated reasonable cost of providing the service for which it is imposed.

C. Written notice of the city manager's decision on the appeal after hearing shall be mailed to the appellant within thirty (30) days after the hearing. The decision of the city manager shall be the final and conclusive administrative remedy. (Ord. 2010-036 § 1; prior code § 2.08.820)

#### **1.24.150 Postponement of hearing.**

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Either the appellant or the city department imposing the fee or charge may request a postponement of the hearing for good cause. The request shall be submitted to the city manager in writing for decision. Good cause shall include (without limitation) the ground that data necessary to determine the estimated reasonable cost of the service is not yet available. In such cases, the hearing may be postponed until after the service has been provided or to another appropriate time. (Ord. 2010-036 § 1; prior code § 2.08.830)

#### **1.24.160 Claim presentation.**

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To challenge the city manager's decision in court, the appellant must first present a claim to the city in accordance with Section 3.04.070 of this code. The claim must be presented within one year of when the appeal is denied. (Ord. 2010-036 § 1; prior code § 2.08.840)

## Notice of Appeal

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Please consider this an appeal of the October 31, 2011 Department of Parks and Recreation Director's decision to deny a refund of park development impact fees for 545 36th Street.

### Background

On September 1, 2011, Ryan DeVore, the City's Chief Building Official stated the following in an email to the owners of 545 36th Street:

*The current policy and precedent set by the City of Sacramento Building Division is to classify buildings as new when more than 50% of the walls are removed. After conducting my own research, I determined that although this policy is common knowledge, it is not formalized. I therefore default to the 2010 California Residential Code (CRC). The CRC defines an addition as "an extension or increase in floor area or height of a building or structure." Absent a formal policy, I will classify this change in scope as an **addition** (emphasis added).*

In spite of the City's Chief Building Official defining the project as an addition, the city's Parks Department (Department) imposed development impact fees on the project, based on the Department's interpretation of the project as new construction/a new building. The problem with this interpretation is twofold:

- I. **There is no formal definition of new construction in either the city or state building/residential code for purposes of applying development fees; and**
- II. **There is no nexus for imposing the parks fee on an existing structure.**

### I. No Formal Definition of New Construction

There is no formal definition of "new construction" in either the City Code, or the California Residential Code (CRC) for purposes of applying the parks fee. My review of the City Code yielded the following observations:

#### Where is "new construction" defined?

City Code defines new construction three different times in the following sections:

#### 1. **Title 15 – Buildings and Construction**

Chapter 15.154 Universal Design (Accessibility Standards) for Residential Dwellings

Definitions (15.154.030) Definition: "New construction" means the construction of a new building. New construction does not include **additions**, alterations, or remodels to existing buildings."

#### 2. **Title 17 – Zoning**

Division V - Special Districts, Definitions

Chapter 17.124 Sacramento Railyards Special Planning District (17.124.070 Applications)

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**Definition:** “New construction shall mean the construction of a new building or structure, along with all associated facilities and appurtenances, such as walls, fences, and signs, but shall not include **additions** to existing buildings or structures.”

**3. Title 17 – Zoning**

Division V- Special Districts, Definitions

Chapter 17.132 Design Review (17.132.020) Definition: “New construction” means the construction of a new building or structure, along with all associated facilities and appurtenances, such as walls, fences, and signs. New construction does not include **additions** to existing buildings or structures.”

These three references to new construction demonstrate the *intent* of the City Code, when defining new construction, is clearly *not* to include additions or remodels to an existing property.

Parks Department Interpretation

The Parks Department has been applying its own interpretation of what constitutes new construction as stated in the recent ruling by the Department’s Director:

*This department (Parks) has a consistent, long-held interpretation of City Code that considers new residential construction to include cases like yours where a residential building has been demolished to the point that greater than 50% of the interior and/or exterior walls (combined) have been removed with the intent of reconstruction or expansion of the original building.*

However, this is an interpretation of City Code, and while it may be *a consistent, long-held interpretation*, it is not supported legally by either City Code or the California Residential Code. Quite the contrary, Title 15 and 17 of the City Code clearly state that alterations and additions to existing structures shall not be considered “new.” An applicant should be able to rely on the City Code for decisions on whether or not fees apply to a project. The practice of imposing fees based on “staff interpretation” seems arbitrary, when in fact imposition of fees should be based on codified regulations.

Exemptions to the Park Impact Fees

Further review of City Code yielded additional information:

Chapter 18.44, Park Development Impact Fee, Exemptions (18.44.070) states the following:

A. *The following shall be exempted from payment of the park fee established by this chapter:*

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1. *Alterations, renovations, or expansion of an existing residential building or structure where no additional dwelling units are created and the use is not changed; provided, however, that the expansion or intensification of use of an existing commercial or industrial building or structure shall not be exempt from the fees established in this chapter.*

*B. Any claim of exemption with respect to the fees established by this chapter must be made no later than the time for application for fee adjustment pursuant to Section 18.44.140 of this chapter. (Ord. 2000-017 § 2(c) (part); Ord. 99-044 § 4 (part); prior code § 84.12.1207)"*

For purposes of number one above, I have included the only definition of a new dwelling unit I could find in City Code:

Title 15 – Buildings and Construction, Chapter 15.132 Building Permits for Dwelling Units in Impacted School Areas, Definitions (15.132.020): *"New dwelling unit" means newly constructed dwelling units including additional dwelling units added to an existing structure. "New dwelling unit" does not mean the rehabilitation or alteration of an existing dwelling unit."*

Clearly, the intent of Section 18.44.070 of City Code is to exempt alterations, renovations or expansions of existing residential buildings from the park development impact fee. The Department's *interpretation* of when and how the fees should be applied is inconsistent and contrary to City Code and, appears to be applied in an arbitrary manner. For example, since the establishment of the park impact fee there have been other projects in my neighborhood that included the removal of walls that were not subject to the parks fee. Again, the imposition of the fee should be clearly defined and codified so that it is not subject to the Department's arbitrary application.

## **II. No Legal Nexus**

In terms of the legal nexus required to impose the fee, the Director's ruling was not on point, as it did not address key issues required by California Government Code, including:

1. It did not address the original purpose of the fee, as required by California Code;
2. It applied the fee incorrectly based on a definition of new construction that is not codified, but staff's interpretation; and
3. It conflicts with the nexus study originally written to support the imposition of the fee.

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**California Government Code Section 66001**

California Government Code Section 66001 requires the city to establish a nexus between the type of development and the amount of fees levied upon such development based on the need for such fees. The specific findings required include:

1. Identify the purpose of the fee;
2. Identify the use for which the fee is to be put;
3. Determine how there is a reasonable relationship between the fee's use and the type of development on which the fee is imposed; and
4. Determine how there is a reasonable relationship between the need for the public facility and the type of development on which the fee is imposed.

**The Purpose of the Fee**

Section 18.44.030 of City Code, Establishment of Park Development Impact Fees for Park Facilities states:

*A park development impact fee is established to provide funding for park facilities. The park fees authorized in this chapter shall be assessed upon landowners developing property for any residential or nonresidential use in order to provide all or a portion of the funds which will be necessary to provide neighborhood, community, and regional parks required to meet the needs of and address the impacts caused by the **additional persons residing** or employed on the property as a result of the development.*

The purpose of the park impact fee, as required and identified by City Code, is to fund impacts caused by additional persons residing on a property as a result of development. 545 36th Street does not include the construction of any new dwelling units, therefore there are no additional persons residing on the property.

The Director's ruling stated:

*Because new development places a strain on the City's park system, that impact is mitigated through the payment of a park development impact fee...Once it was determined that your project consisted of the new construction of a single-family residential building, which is one of the classes of development to which the park development impact fee applies, the fee was automatically calculated for your Building Permit.*

However, the ruling did not address the purpose of the fee and whether or not the application of the fee to 545 36th Street meets the intended purpose. The purpose, which was identified in the City Code as required per Government Code Section 66001, "to fund impacts caused by *additional persons residing on the property as a result of development*" is a critical requirement in the city's right to impose the fee.

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**Inconsistency in How the Project is Defined by the City**

The Director's ruling also states that "once it was determined that your project consisted of the new construction of a single-family residential building...the fee was automatically calculated for your Building Permit." That statement is incorrect. 545 36th Street was identified officially by the City's Chief Building Official as an addition, based on the California Residential Code. The project, per both the City Code and the California Residential Code, is not defined as "new construction." It was the Department's interpretation that led to the imposition of fees.

**Other Conflicts with the Nexus Study**

Government Code Section 66001 also states the city's requirement to "determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed."

When reviewing the nexus study prepared by the city (*City of Sacramento Park Development Fee Nexus Study*, August 4, 1999, *City of Sacramento Park Development Fee Nexus Study*, April 16, 2002, and the *Revised Final Report, City of Sacramento Park Development Fee Nexus Study*, August 5, 2004) the following sections were noted:

- *The Nexus Study establishes the nexus for the Park Development Impact Fee based on the direct benefit new development receives from the new parks and recreation facilities. This Nexus Study covers the park facility needs for new development in the City through the year 2015 (p. 2, August 1999 and p. 4, April 2002);*
- *The park development impact fee will fund the initial construction of neighborhood and community park facilities to serve new development...(p. 4, August 1999 and p. 7, April 2002)*
- *The proposed Park Development Impact Fee justified in this Nexus Study will fund the initial construction of park improvements. The funding for the construction of additional facilities in neighborhood and community parks and the construction of park facilities in regional parks, will be provided through other sources of funds...(p. 2, August 1999);*
- *Park Development Impact fees can only be used to fund parks that will serve new development. Any existing deficiencies in neighborhood or community parks, as well as funding for development of regional parks and open space will need to come from other sources of revenue. (p. 6, April 2002);*

Included in the *Findings* section of both the August 1999 (p. 19) and April 2002 (pages 20-21) studies is the following:

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***Purpose of the Fee:*** Develop park and recreational facilities to meet the needs of the new residential and employee population in the City of Sacramento.

***Relationship Between Use of Fee and Type of Development:*** The development of new residential and non-residential land uses in the City will generate additional need for neighborhood and community park and recreation services and the associated need for park facilities. The fees will be used to develop the user capacity for neighborhood and community park land to serve new residential and commercial development.

***Relationship between Need for Facility and Type of Project:*** Each new residential and non-residential development project will generate additional demand for park and recreation services and the associated need for park and recreation facilities.

The above references clearly demonstrate the conclusion of the nexus study that the park fee is appropriate for new development which leads to new residents and therefore, an additional demand on the city's park system. What the studies do not demonstrate, is the nexus between an addition/remodel or even a *reconstruction* of a dwelling unit and an increased demand in park services, thus justifying the application of this fee. The Director's ruling stated "Because new development places a strain on the City's park system, that impact is mitigated through the payment of a park development impact fee." While "new development" may place a strain on the City's park system, the nexus study states that "each new residential and non-residential development project will generate additional demand for park and recreation services..." A key difference in the Director's ruling and the nexus study is the identification of additional demand. Without additional demand, there is no nexus to impose the fee. The fee was established to address the development of new growth areas in the city. It was not established, nor can a nexus be drawn for additions/remodels and renovations in established neighborhood. The city's imposition of the fees to additions/remodels/renovations that do not create an additional demand on park services is an abuse of Government Code Section 66001.

**Conclusion**

In conclusion, I request that you reverse the ruling by the Director to impose the park development fee to 545 36th Street for the following reasons:

1. There is no definition in the City Code or California Residential Building Code of "new construction" that supports the application of the park impact fees; and
2. The City has not established a nexus as required per California Government Code Section 66001 for the application of the fee.