

ITEM 5.3

CITY MANAGER'S REPORT AUGUST 12, 2019, CITY COUNCIL REGULAR MEETING

ITEM: PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER ADOPTION OF THE LATHROP-MANTECA FIRE DISTRICT FIRE FACILITIES FEE STUDY AND THE FEES RECOMMENDED THEREIN

RECOMMENDATION: Council to Consider the Following:

1. Hold a Public Hearing; and
2. Adopt A Resolution Adopting the Lathrop-Manteca Fire District Fire Facilities Fee Study and the Fees Recommended Therein

SUMMARY:

Fire facilities fees are necessary to provide a source of revenue by which new development within the City will contribute a fair and proportionate share of the cost of providing facilities, apparatus, vehicles and equipment (Facilities) needed by the Lathrop-Manteca Fire District to provide fire protection and other emergency services within the City of Lathrop. The District retained NBS Government Finance Group (NBS) to prepare a fire facilities fee study for the portion of the District within the City of Lathrop. NBS prepared the Lathrop-Manteca Fire District Fire Facilities Fee Study (NBS Study) included as Attachment B, that identifies establishing updated fire facilities fees for the portion of the District within the City of Lathrop.

Staff requests that City Council hold a public hearing, consider all information and public testimony and, if determined to be appropriate, adopt a resolution approving the NBS Study and the fees recommended therein.

BACKGROUND:

The Lathrop-Manteca Fire District contracted with NBS to prepare a study to calculate updated fire facilities fees for the portion of the District within the City of Lathrop. The State of California Mitigation Fee Act (also known as "AB 1600," Government Code sections 66000, et seq.), identifies the required findings which must be made by the City in any action establishing, increasing, or imposing a fee charged as a condition of approval of a development project. The NBS Study calculates updated fire facilities fees based on future development's proportionate share of the cost of Facilities needed by the District to provide fire protection and other emergency services to the City of Lathrop.

The Lathrop-Manteca Fire District currently operates three fire stations within the City of Lathrop and two fire stations in the unincorporated portion of the District. The latter two fire stations and their associated apparatus and equipment were not considered in the calculation of updated fire facilities fees for the City of Lathrop in the NBS

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study. The District's 2018 Master Plan calls for three additional fire stations to be constructed in the future within the City of Lathrop. The master plan also anticipates construction of a new training facility at an undetermined location.

The total cost of additional Facilities needed to serve the City of Lathrop to buildout was estimated in the NBS Study to be \$37,340,000 at current price levels. The cost attributed in the NBS Study to future development in the City was \$32,484,803, which means that approximately \$4,855,200 of the total estimated cost must be funded from sources other than the fire facilities fee.

The NBS Study projects that the square feet of building area in the City will increase from around 39 million square feet in 2019 to approximately 104 million square feet at buildout, an increase of 166%. The NBS Study calculated the fire facilities fees by allocating the depreciated value of existing District facilities in the City plus the estimated cost of future District facilities in the City to all existing and future development in the City based on the estimated square feet of building area for both existing and future development.

The calculations described above result in a per-square-foot fee of \$0.52. An administrative charge of 2% (\$0.01) was added to that amount to bring the total proposed fire facilities fee to \$0.53 per square foot for all types of development.

The District currently charges a fire facilities fee of \$0.31 for residential development and \$0.43 for commercial and industrial development. The District fees were adopted in 2001 by resolution 01-1165 and have not been increased since.

FEE ADJUSTMENTS

The fire facilities fees may be adjusted in future years to reflect revised facility standards, revised costs, or changes in land uses, or development plans. In addition to such adjustments, each year the fire facilities fees will be adjusted by the change in the ENR 20-City Building Cost Index over the prior calendar year. The facilities costs inflated in this Fee Study are based on the ENR 20-City BCI value for June 27, 2019, which is 6131.42.

REASON FOR RECOMMENDATION:

The purpose of the fire facilities fees is to provide a source of revenue by which new development within the City will contribute a fair and proportionate share of the cost of Facilities needed by the Lathrop-Manteca Fire District to provide fire protection and other emergency services within the City.

The Fire Protection District Law of 1987 (Health and Safety Code Section 13916) prohibits the Board of a Fire Protection District from charging "a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment." Consequently, many cities and counties in California impose such fees for fire protection districts that are responsible for fire protection within their boundaries.

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ESTABLISH UPDATED FIRE FACILITIES FEES FOR THE PORTION OF THE LATHROP-MANTECA FIRE DISTRICT WITHIN THE CITY OF LATHROP

FISCAL IMPACT:

None. The Fire Facilities Fee Study is being funded by the District. The fire facilities fees are collected by the District and the District is responsible for implementation and administration of those fees. City Staff ensures that fire facilities fees are paid before building permits are issued, but updating these fees does not change that process.

ATTACHMENTS:

- A. Resolution Adopting the Lathrop-Manteca Fire District Fire Facilities Fee Study and the Fees Recommended Therein
- B. Lathrop-Manteca Fire District Fire Facilities Fee Study by NBS, dated July 18, 2019

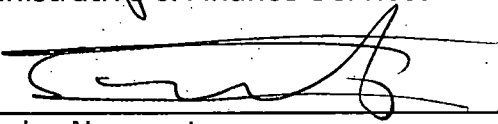
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APPROVALS:



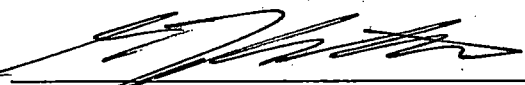
Cari James
Administrative & Finance Services Director

8/30/19
Date



Salvador Navarrete
City Attorney

7-30-19
Date



Stephen J. Salvatore
City Manager

8.2.19
Date

RESOLUTION NO. 19-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP ADOPTING LATHROP-MANTECA FIRE DISTRICT FIRE FACILITIES FEES FOR THE CITY OF LATHROP

WHEREAS, the fire facilities fees are necessary to provide a source of revenue by which new development within the City will contribute a fair and proportionate share of the cost of providing facilities, apparatus, vehicles and equipment (Facilities) needed by the Lathrop-Manteca Fire District (District) to provide fire protection and other emergency services within the City of Lathrop; and

WHEREAS, as new development occurs throughout the City it is critical that the fire facilities fees be regularly updated to ensure that they keep up with the rising costs of Facilities; and

WHEREAS, District retained NBS Government Finance Group (NBS) to prepare a study to calculate updated fire facilities fees for the portion of the District within the City of Lathrop; and

WHEREAS, NBS prepared the Lathrop-Manteca Fire District Fire Facilities Fee Study (NBS Study) dated July 18, 2019, that calculates updated fire facilities fees for the portion of the District within the City of Lathrop; and

WHEREAS, the NBS Study calculates updated fire facilities fees based on future development's proportionate share of the cost of Facilities needed by the District to provide fire protection and other emergency services within the City of Lathrop; and

WHEREAS, the NBS Study is based upon the 2018 Lathrop-Manteca Fire District Master Plan, and the analysis, input and active participation of District staff, City staff and NBS; and

WHEREAS, on July 18, 2019, the NBS Study was unanimously approved and adopted by the Board of the Lathrop-Manteca Fire District; and

WHEREAS, the State of California Mitigation Fee Act (also known as "AB 1600," Government Code sections 66000, et seq.), identifies the required findings which must be made by the City in any action establishing, increasing, or imposing a fee as a condition of approval of a development project; and

WHEREAS, notice of public hearing of this Resolution was published as required by the Mitigation Fee Act, California Government Code sections 66000 et seq.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop does hereby adopt the NBS Study, dated July 18, 2019 attached as Attachment "B" to the City Manager's Report of August 12, 2019 and incorporated herein by this reference and Council hereby adopts the fees recommended in the NBS Study based on findings required by the State of California Mitigation Fee Act (also known as "AB 1600," Government Code sections 66000, et seq.). Specifically Council hereby makes all of the following findings:

1. The purpose of the fire facilities fees is to protect the lives and property of residents and businesses in Lathrop by contributing to the cost of Facilities needed by District to provide fire protection and other emergency services to the City of Lathrop.
2. The use of the fire facilities fees is to provide funding for Facilities identified in the NBS Study dated July 18, 2019. Pursuant to the Lathrop Municipal Code Section 3.20.040 collected fees may be used for no other purpose.
3. The geographic area in which the fees will be imposed is the entire City of Lathrop.
4. Fire Facilities Fees calculated in the NBS study are based on new development's estimated fair and proportionate share of the cost of District Facilities needed to provide fire protection and other emergency services within the City.
5. There is a reasonable relationship between the use of the fees and the type of development projects on which the fees are imposed. The Facilities funded by the fees are essential to meeting the increasing need for fire protection and other emergency services in the City of Lathrop as the City grows.
6. There is a reasonable relationship between the need for the Facilities to be funded by the fees and the type of development on which the fees are imposed. All new development in the City creates additional demand for fire protection and other emergency services provided by the District. Future Facilities to be funded by the fees are identified in the Lathrop-Manteca Fire District 2018 Master Plan.
7. There is a reasonable relationship between the amount of the fee and the cost of facilities attributable to the development project on which the fee is imposed. The amount of the fee charged to any development project represents that project's proportionate share of the cost of facilities serving all development in the City, based on the project's square feet of building area as a share of the estimated total square feet of building area in the City at buildout.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lathrop does hereby authorize the adoption of the Lathrop Manteca Fire District, Fire Facilities Fees.

The foregoing resolution was passed and adopted this 12th day of August 2019, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

APPROVED AS TO FORM:

Teresa Vargas, City Clerk



Salvador Navarrete, City Attorney

ATTACHMENT B

LATHROP-MANTECA FIRE DISTRICT

Final Report
Fire Facilities Fee Study
July 18, 2019

Prepared by:



nbsgov.com

Corporate Headquarters

32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Toll free: 800 676.7516

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1. Introduction

Purpose

The purpose of this study is to analyze the impacts of development on the need for fire protection facilities and other capital assets provided by the Lathrop-Manteca Fire District (LMFD) within the City of Lathrop, and to update the fire facilities fees currently imposed by the City for LMFD. The “fire facilities fees” addressed in this report can also be called “development impact fees,” or just “impact fees,” and in places this report uses those terms.

The methods used to calculate fire facilities fees in this report are intended to satisfy all legal requirements governing such fees, including provisions of the U. S. Constitution, the California Constitution and the California Mitigation Fee Act (Government Code Sections 66000-66025).

Background

The Lathrop-Manteca Fire District serves all of the City of Lathrop, as well as a portion of unincorporated San Joaquin County. The District surrounds the City of Manteca but does not include it. The fire facilities fees calculated in this study are intended to apply only to development within the City of Lathrop.

New development in the unincorporated portion of the District is limited by a lack of water and sewer service. While some future development may occur in that area, the extent and location of such development, and the fire protection facilities that would be needed to serve such development, are unknown at this time. Any major development in what is now the unincorporated portion of the District might be annexed to the City of Manteca. Or, if it remains in the County might be subject to a development agreement which would allow the District to request mitigation of significant impacts. Failing that, the fire facilities fees already in place in the County portion of the District would apply.

Legal Framework for Impact Fees

This brief summary of the legal framework for development fees is intended as a general overview. It was not prepared by an attorney, and should not be treated as legal advice.

Fire Protection District Law of 1987. California Health and Safety Code Section 13916, which is part of the Fire Protection District Law of 1987, states: “A (fire protection) district board shall not charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment.” However, although the District itself may not charge such fees, it is quite common in California for cities and counties to impose impact fees for fire protection districts that provide services within their jurisdiction. The fees calculated in this report update fire facilities fees currently imposed for the District by the City of Lathrop.



U. S. Constitution. Like all land use regulations, development exactions, including impact fees, are subject to the 5th Amendment prohibition on taking of private property for public use without just compensation. Both state and federal courts have recognized the imposition of impact fees on development as a legitimate form of land use regulation, provided the fees meet standards intended to protect against "regulatory takings." A regulatory taking occurs when regulations unreasonably deprive landowners of property rights protected by the Constitution.

In two landmark cases dealing with exactions, the U. S. Supreme Court has held that when a government agency requires the dedication of land or an interest in land as a condition of development approval, or imposes ad hoc exactions as a condition of approval on a single development project that do not apply to development generally, a higher standard of judicial scrutiny applies. To meet that standard, the agency must demonstrate an "essential nexus" between such exactions and the interest being protected (See *Nollan v. California Coastal Commission*, 1987) and make an "individualized determination" that the exaction imposed is "roughly proportional" to the burden created by development (See *Dolan v. City of Tigard*, 1994).

Until recently, it was widely accepted that legislatively-enacted impact fees that apply to all development in a jurisdiction are not subject to the higher standard of judicial scrutiny flowing from the Nollan and Dolan decisions. But after the U. S. Supreme Court decision in *Koontz v. St. Johns Water Management District* (2013), state courts have reached conflicting conclusions on that issue.

In light of that uncertainty, any agency enacting or imposing impact fees would be wise to demonstrate a nexus and ensure proportionality in the calculation of those fees.

Defining the "Nexus." While courts have not been entirely consistent in defining the nexus required to justify exactions and impact fees, that term can be thought of as having the three elements discussed below. We think proportionality is logically included as one element of that nexus, even though it was discussed separately in *Dolan v. Tigard*. The elements of the nexus discussed below mirror the three "reasonable relationship" findings required by the Mitigation Fee Act for establishment and imposition of impact fees.

Need. Development must create a need for the facilities to be funded by impact fees. All new development in a community creates additional demands on some or all public facilities provided by local government. If the capacity of facilities is not increased to satisfy the additional demand, the quality or availability of public services for the entire community will deteriorate. Impact fees may be used to recover the cost of development-related facilities, but only to the extent that the need for facilities is related to the development project subject to the fees.

The *Nollan* decision reinforced the principle that development exactions may be used only to mitigate impacts created by the development projects upon which they are imposed. In this study, the impact of development on facility needs is analyzed in terms of quantifiable

relationships between various types of development and the demand for public facilities based on applicable level-of-service standards. This report contains all of the information needed to demonstrate compliance with this element of the nexus.

Benefit. Development must benefit from facilities funded by impact fees. With respect to the benefit relationship, the most basic requirement is that facilities funded by impact fees be available to serve the development paying the fees. A sufficient benefit relationship also requires that impact fee revenues be segregated from other funds and expended in a timely manner on the facilities for which the fees were charged. Nothing in the U.S. Constitution or California law requires that facilities paid for with impact fee revenues be available exclusively to development projects paying the fees.

Procedures for earmarking and expenditure of fee revenues are mandated by the Mitigation Fee Act, as are procedures to ensure that the fees are either expended expeditiously or refunded. Those requirements are intended to ensure that developments benefit from the impact fees they are required to pay. Thus, over time, procedural issues as well as substantive issues can come into play with respect to the benefit element of the nexus.

Proportionality. Impact fees must be proportional to the impact created by a particular development project. Proportionality in impact fees depends on properly identifying development-related facility costs and calculating the fees in such a way that those costs are allocated in proportion to the facility needs created by different types and amounts of development. The section on impact fee methodology, below, describes methods used to allocate facility costs and calculate impact fees that meet the proportionality standard.

California Constitution. The California Constitution grants broad police power to local governments, including the authority to regulate land use and development. That police power is the source of authority for local governments in California to impose impact fees on development. Some impact fees have been challenged on grounds that they are special taxes imposed without voter approval in violation of Article XIII A. However, that objection is valid only if the fees charged to a project exceed the cost of providing facilities needed to serve the project. In that case, the fees would also run afoul of the U. S. Constitution and the Mitigation Fee Act.

Articles XIIC and XIID, added to the California Constitution by Proposition 218 in 1996, require voter approval for some "property-related fees," but exempt "the imposition of fees or charges as a condition of property development."

The Mitigation Fee Act. California's impact fee statute originated in Assembly Bill 1600 during the 1987 session of the Legislature, and took effect in January, 1989. AB 1600 added several sections to the Government Code, beginning with Section 66000. Since that time, the statute has been amended from time to time, and in 1997 was officially titled the "Mitigation Fee Act." Unless otherwise noted, code sections referenced in this report are from the Government Code.

The Mitigation Fee Act does not limit the types of capital improvements for which impact fees may be charged. It defines public facilities very broadly to include "public improvements, public services and community amenities." Although the issue is not specifically addressed in the Mitigation Fee Act, it is clear both in case law and statute (see Government Code Section 65913.8) that impact fees may not be used to pay for maintenance or operating costs. Consequently, the fees calculated in this report are based on the cost of capital assets only.

The Mitigation Fee Act does not use the term "mitigation fee" except in its official title. Nor does it use the more common term "impact fee." The Act simply uses the word "fee," which is defined as "a monetary exaction, other than a tax or special assessment...that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project"

To avoid confusion with other types of fees, this report uses the widely-accepted terms "impact fee" and "development impact fee" when discussing these fees generically, and the term "fire facilities fee" for the specific fees calculated in this study. All of those terms should be understood to mean "fee" as defined in the Mitigation Fee Act.

The Mitigation Fee Act contains requirements for establishing, increasing and imposing such. They are summarized below. It also contains provisions that govern the collection and expenditure of fees and requires annual reports and periodic re-evaluation of impact fee programs. Those administrative requirements are discussed in the implementation chapter of this report.

Required Findings. Section 66001 requires that an agency establishing, increasing or imposing impact fees must make findings to:

1. Identify the purpose of the fee;
2. Identify the use of the fee; and,
3. Determine that there is a reasonable relationship between:
 - a. The use of the fee and the development type on which it is imposed;
 - b. The need for the facility and the type of development on which the fee is imposed; and
 - c. The amount of the fee and the facility cost attributable to the development project.
(Applies when fees are imposed on a specific project.)

Each of those requirements is discussed in more detail below.

Identifying the Purpose of the Fees. The broad purpose of impact fees is to protect public health, safety and general welfare by providing for adequate public facilities. The specific purpose of the fees calculated in this study is to fund certain capital facilities, apparatus, vehicles and equipment that will be needed to mitigate the impacts of planned new

development on City facilities, and to maintain an acceptable level of fire protection and other emergency services as the City grows.

This report recommends that findings regarding the purpose of impact fees should define the purpose broadly, as providing for the funding of adequate public facilities to serve additional development.

Identifying the Use of the Fees. According to Section 66001, if a fee is used to finance public facilities, those facilities must be identified. A capital improvement plan may be used for that purpose but is not mandatory if the facilities are identified in a General Plan, a Specific Plan, or in other public documents. In this case, we recommend that the City Council adopt this report as the public document that identifies the facilities to be funded by the fees.

Reasonable Relationship Requirement. As discussed above, Section 66001 requires that, for fees subject to its provisions, a "reasonable relationship" must be demonstrated between:

1. the use of the fee and the type of development on which it is imposed;
2. the need for a public facility and the type of development on which a fee is imposed; and,
3. the amount of the fee and the facility cost attributable to the development on which the fee is imposed.

These three reasonable relationship requirements, as defined in the statute, mirror the nexus and proportionality requirements often cited in court decisions as the standard for defensible impact fees. The term "dual rational nexus" is often used to characterize the standard used by courts in evaluating the legitimacy of impact fees. The "duality" of the nexus refers to (1) an impact or need created by a development project subject to impact fees, and (2) a benefit to the project from the expenditure of the fees.

Although proportionality is reasonably implied in the dual rational nexus formulation, it was explicitly required by the Supreme Court in the *Dolan* case, and we prefer to list it as the third element of a complete nexus.

Development Agreements and Reimbursement Agreements. The requirements of the Mitigation Fee Act do not apply to fees collected under development agreements (see Govt. Code Section 66000) or reimbursement agreements (see Govt. Code Section 66003). The same is true of fees in lieu of park land dedication imposed under the Quimby Act (see Govt. Code Section 66477).

Existing Deficiencies. In 2006, Section 66001(g) was added to the Mitigation Fee Act (by AB 2751) to clarify that impact fees "shall not include costs attributable to existing deficiencies in public facilities,..." The legislature's intent in adopting this amendment, as stated in the bill, was to codify the holdings of *Bixel v. City of Los Angeles* (1989), *Rohn v. City of Visalia* (1989), and *Shapell Industries Inc. v. Governing Board* (1991).

That amendment does not appear to be a substantive change. It is widely understood that other provisions of law make it improper for impact fees to include costs for correcting existing deficiencies.

However, Section 66001(g) also states that impact fees “may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.” (Emphasis added.)

Impact fees for Existing Facilities. Impact fees may be used to recover costs for existing facilities to the extent that those facilities are needed to serve additional development and have the capacity to do so. In other words, it must be possible to show that fees used to pay for existing facilities meet the need and benefit elements of the nexus.

Impact Fee Calculation Methodology

Any one of several legitimate methods may be used to calculate impact fees. The choice of a particular method depends primarily on the service characteristics of, and planning requirements for, the facility type being addressed. Each method has advantages and disadvantages in a particular situation. To some extent they are interchangeable, because they all allocate facility costs in proportion to the needs created by development.

Allocating facility costs to various types and amounts of development is central to all methods of impact fee calculation. Costs are allocated by means of formulas that quantify the relationship between development and the need for facilities. In a cost allocation formula, the impact of development is measured by some attribute of development such as added population or added vehicle trips that represent the impacts created by different types and amounts of development.

Plan-Based or Improvements-Driven Method. Plan-based impact fee calculations are based on the relationship between a specified set of improvements and a specified increment of development. The improvements are typically identified in a facility plan, while the development is identified in a land use plan that forecasts potential development by type and quantity.

Using this method, facility costs are allocated to various categories of development in proportion to the service demand created by each type of development. To calculate plan-based impact fees, it is necessary to determine what facilities will be needed to serve a particular increment of new development.

With this method, the total cost of eligible facilities is divided by the total units of additional demand to calculate a cost per unit of demand (e.g. a cost per capita for parks). Then, the cost per unit of demand is multiplied by factors representing demand per unit of development (e.g. population per unit) to arrive at a cost per unit of development.

This method is somewhat inflexible in that it is based on the relationship between a specific facility plan and a specific land use plan. If either plan changes significantly the fees will have to be recalculated.

Note: The plan-based method described above is used to calculate fire facilities fees in this report. Other methods discussed below are included for reference.

Capacity-Based or Consumption-Driven Method. This method calculates a cost per unit of capacity based on the relationship between total cost and total capacity of a system. It can be applied to any type of development, provided the capacity required to serve each increment of development can be estimated and the facility has adequate capacity available to serve the development. Since the cost per unit of demand does not depend on the particular type or quantity of development to be served, this method is flexible with respect to changing development plans.

In this method, the cost of unused capacity is not allocated to development. Capacity-based fees are most commonly used for water and wastewater systems, where the cost of a system component is divided by the capacity of that component to derive a unit cost. However, a similar analysis can be applied to other types of facilities. To produce a schedule of impact fees based on standardized units of development (e.g. dwelling units or square feet of non-residential building area), the cost per unit of capacity is multiplied by the amount of capacity required to serve a typical unit of development in each of several land use categories.

Standard-Based or Incremental Expansion Method. Standard-based fees are calculated using a specified relationship or standard that determines the number of service units to be provided for each unit of development. The standard can be established as a matter of policy or it can be based on the level of service being provided to existing development in the study area.

Using the standard-based method, costs are defined on a generic unit-cost basis and then applied to development according to a standard that sets the number of service units to be provided for each unit of development.

Park in-lieu and impact fees are commonly calculated this way. The level of service standard for parks is typically stated in terms of acres of parks per thousand residents. A cost-per-acre for park land or park improvements can usually be estimated without knowing the exact size or location of a particular park. The ratio of park acreage to population and the cost per acre for parks is used to calculate a cost per capita. The cost per capita can then be converted into a cost per unit of development based on the average population per dwelling unit for various types of residential development.

Buy-In or Recoupment Fees. Buy-in fees can be calculated using either the plan-based method or the capacity-based method described above. The difference is that this type of fee is intended to recover a portion of the cost of existing facilities rather than facilities to be built in the future. In some cases, an impact fee is based on costs for both existing and future assets, so that a only a portion of the fee involves a buy-in.

Chapter 2, which follows, contains data on existing and future development used in the fire facilities fee analysis. Chapter 3 presents the fire facilities fee analysis and fee calculations. Chapter 4 outlines recommendations for implementing the fire facilities fees calculated in this report.

2. Development Data

This chapter presents data on existing and future development in the City of Lathrop that will be used to calculate fire facilities fees for the City in this report. The information in this chapter is used to allocate the cost of capital facilities between existing and future development and among various types of new development in the calculation of fire facilities fees.

Study Area

As discussed in Chapter 1, the fire facilities fees calculated in this report are intended to apply only to the portion of the Lathrop-Manteca Fire District service area within the City of Lathrop. Therefore, the study area addressed in this chapter is the City of Lathrop.

Time Frame

No time frame is assumed for the buildout of future development projected in this study. The methods used to calculate fire facilities fees in this study do not require assumptions regarding the rate or timing of development.

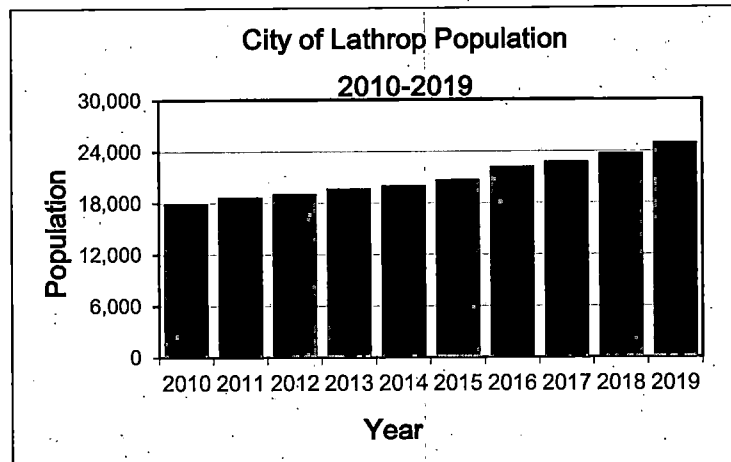
Recent Growth

The figure at right shows the California Department of Finance official January 1 population estimates for the City of Lathrop for the years 2010 through 2019.

Over that period, Lathrop has been one of the fastest-growing cities in California. Its population has increased an average of 3.25% per year, compounded.

The City's estimated January 1, 2019 population of 24,936 is an increase of 6,241 or 35% from a population of 18,695 at the time of the 2010 Census.

In recent years, the City of Lathrop has also attracted substantial commercial and industrial development, including a major new facility for the auto-manufacturer, Tesla.



Development Types

The development types defined in this study are intended to reflect actual land uses rather than zoning or general plan land use designations. The following breakdown of development types is used throughout this study:

- Residential – Low Density
- Residential – Medium Density
- Residential – High Density
- Residential - Mobile Home
- Commercial
- Office
- Industrial
- Schools/Institutional

Demand Variable

To calculate fire facilities fees, the relationship between facility needs and development must be quantified in cost allocation formulas. Some measurable attribute of development must be used as a “demand variable” in those formulas. The demand variable used to calculate fire facilities fees in this study is building area in square feet. Building square footage reasonably represents the impact of development on the demand for services provided by the Lathrop-Manteca Fire District and the facilities, apparatus and equipment needed to support those services.

Estimates of existing residential development and forecasts of future residential development presented later in this chapter are shown in dwelling units for each of the four types of residential development listed in the previous section. In order to convert dwelling units into square feet of building area, this report uses estimates of average dwelling unit size in square feet for each type of residential development. Those estimates are shown in Table 2.1.

Table 2.1 Demand Factors

Land Use Category	Unit Type ¹	Sq Ft per Unit ²
Residential - Low Density	DU	2,750
Residential - Medium Density	DU	1,700
Residential - High Density	DU	1,200
Residential - Mobile Home	DU	1,080
Commercial	KSF	1,000
Office	KSF	1,000
Industrial	KSF	1,000
Institutional	KSF	1,000

¹ DU = dwelling units; KSF = 1,000 square feet of gross building area

² Average square feet per unit of residential development estimated by NBS based on data from the City Lathrop Community Development Department and other sources

Estimates of existing non-residential¹ development and forecasts of future non-residential development are shown in thousands of square feet, abbreviated as “KSF.” Some of the calculations shown in Chapter 3 require the conversion of KSF to square feet and vice versa.

Existing and Forecasted Development

Summaries of existing and forecasted development in the City of Lathrop are presented in Tables 2.2 through 2.4 below. Lathrop has a great deal of development potential. The number of dwelling units in the City could more than triple, and the square footage of non-residential building area could more than double by buildout of the current general plan.

Table 2.2 shows estimated existing development in the City as of January 1, 2019, in terms of dwelling units (for residential development categories) and total square feet of building area in thousands of square feet (KSF).

Table 2.2 City of Lathrop Existing Development as of 1/1/2019

Land Use Category	Unit Type ¹	Dwelling Units ²	Bldg Area (KSF) ³
Residential - Low Density	DU	6,296	17,314.0
Residential - Medium Density	DU	150	255.0
Residential - High Density	DU	71	85.2
Residential - Mobile Home	DU	378	408.2
Commercial	KSF		1,524.8
Office	KSF		366.6
Industrial	KSF		19,243.0
Schools/Institutional	KSF		59.8
Totals		6,895	39,256.6

¹ DU = dwelling units; KSF = 1,000 square feet of gross building area

² Existing dwelling units based on the California Department of Finance 2019 E-5 report

³ Existing residential building area in KSF = dwelling units X square feet per unit from Table 2.1 / 1,000; non-residential building area from 2018 San Joaquin County Assessor data

Table 2.3 on the next page shows forecasted future development in the City through buildout.

¹ Non-residential development includes the commercial, office, industrial and schools/institutional categories.

Table 2.3 Future Development to Buildout of the City

Land Use Category	Unit Type ¹	Dwelling Units ²	Bldg Area (KSF) ³
Residential - Low Density	DU	9,156	25,179.0
Residential - Medium Density	DU	3,565	6,060.5
Residential - High Density	DU	4,005	4,806.0
Residential - Mobile Home	DU	0	0.0
Commercial	KSF		8,276.4
Office	KSF		1,947.1
Industrial	KSF		16,152.0
Schools/Institutional	KSF		2,714.5
Totals		16,726	65,135.5

¹ DU = dwelling units; KSF = 1,000 square feet of gross building area

² Added building area in square feet = buildout development from Table 2.4 less existing development from Table 2.2

Table 2.4 shows forecasted total development in the City at buildout.

Table 2.4 Total Development at Buildout of the City

Land Use Category	Unit Type ¹	Dwelling Units ²	Bldg Area (KSF) ³
Residential - Low Density	DU	15,452	42,493.0
Residential - Medium Density	DU	3,715	6,315.5
Residential - High Density	DU	4,076	4,891.2
Residential - Mobile Home	DU	378	408.2
Commercial	KSF		9,801.2
Office	KSF		2,313.7
Industrial	KSF		35,395.0
Schools/Institutional	KSF		2,774.3
Totals		23,621	104,392.1

¹ DU = dwelling units; KSF = 1,000 square feet of gross building area

² Buildout dwelling units based on data from the City of Lathrop 2018 Integrated Water Master Plan and the proposed (as of June 2019) increase in dwelling unit counts for the River Islands development

³ Buildout residential building area = buildout dwelling units X square feet per unit from Table 2.1 / 1,000; buildout non-residential building area based on the City of Lathrop 2018 Integrated Water Master Plan

The information in these tables is used in the next chapter in the calculation of fire facilities fees for the City of Lathrop portion of the Lathrop-Manteca Fire District.

3. Fire Facilities Fees

This chapter calculates fire facilities fees for fire protection facilities, apparatus vehicles and equipment serving the portion of the Lathrop-Manteca Fire District within the City of Lathrop. The District currently operates five fire stations, three of them located in the City of Lathrop. The District's 2018 Master Plan calls for three additional fire stations to be constructed in the City.

Methodology

The method used to calculate fire facilities fees in this chapter is the plan-based method discussed in Chapter 1. That method calculates fire facilities fees by allocating the cost of specific capital facilities to the development served by those facilities. (When the term "facilities" is used in this report, it is meant to include firefighting apparatus, vehicles and equipment associated with those facilities.) In this case, the cost of the District's existing and future facilities will be allocated to both existing and future development so that those costs are allocated equitably to all development.

As noted in Chapter 1, while the boundaries of the Lathrop-Manteca Fire District encompass some unincorporated territory in San Joaquin County, the fire facilities fees calculated in this report are intended to apply only to development within the City of Lathrop. Consequently, this analysis must recognize that the District's existing facilities serve areas outside the City.

The unincorporated part of the District is mostly agricultural. That area is not expected to experience significant urban development in the future due to a lack of water and sewer service. Two of the District's existing fire stations are located in the unincorporated portion of the District. And, although fire companies assigned to those stations do respond to calls within the City, this analysis excludes the value of those two stations and their assigned fire engines from the calculation of fire facilities fees for the City portion of the District.

Level of Service

The critical measure of level of service for fire protection and emergency medical services is emergency response time. The number of fire stations needed to serve a particular area with acceptable response times is determined by specific conditions within the area. In this case, the District's 2018 Master Plan has determined the number and general location of fire stations needed to provide an acceptable level of service within the City of Lathrop. Those future stations and their associated apparatus, vehicles and equipment are shown in the Tables that follow.

Existing and Future Facilities

Table 3.1 lists the District's existing facilities and planned future facilities with estimated building construction cost (for future buildings) or replacement cost (for existing buildings),

depreciated replacement cost for existing buildings, and estimated land cost (for future facilities) or land value (for existing facilities). Estimated building cost or replacement cost includes site development and furniture, fixtures and equipment.

As discussed on the previous page and shown in the table below, the value of existing Fire Stations 32 and 33 is excluded from the cost basis used in the calculation of fire facilities fees for the City of Lathrop portion of the District.

Table 3.1: Existing and Future Fire Stations

Facility	Constr Date ¹	Building New or Repl Cost ¹	Useful Life (Yrs) ¹	Depr Building Repl Cost ²	Site Acres ¹	Est Land Cost or Value ³	Facilities Fee Cost Basis ⁴
Fire Station 31	1972	\$ 10,000,000	50	\$ 600,000	2.5	\$ 500,000	\$ 1,100,000
Fire Station 32	1976	\$ 4,500,000	50	\$ 630,000	1.0	\$ 200,000	\$ 0
Fire Station 33	1976	\$ 4,500,000	50	\$ 630,000	1.0	\$ 200,000	\$ 0
Fire Station 34	2006	\$ 6,000,000	50	\$ 4,440,000	2.5	\$ 500,000	\$ 4,940,000
Fire Station 35	2019	\$ 7,500,000	50	\$ 7,500,000	2.5	\$ 500,000	\$ 8,000,000
Fire Station 36	Future	\$ 7,500,000	50	\$ 7,500,000	2.0	\$ 400,000	\$ 7,900,000
Fire Station 37	Future	\$ 5,500,000	50	\$ 5,500,000	2.0	\$ 400,000	\$ 5,900,000
Fire Station 38	Future	\$ 5,500,000	50	\$ 5,500,000	2.0	\$ 400,000	\$ 5,900,000
Training Center	Future	\$ 10,000,000	50	\$ 10,000,000	2.5	\$ 500,000	\$ 10,500,000
Total						3,600,000	\$ 44,240,000

¹ Information provided by the Lathrop-Manteca Fire District; figures include furniture, fixtures and equipment

² Depreciated building replacement cost using straight-line depreciation over the useful life of the asset

³ Estimated land value based on \$200,000 per acre

⁴ Facilities fee cost basis = depreciated building replacement cost + estimated land value. The value of fire stations 32 and 33 is attributed to the County portion of the District's service area and is not included in the cost basis for the impact fee calculations.

Table 3.2 on the next page shows the replacement cost and depreciated replacement cost for the District's existing firefighting apparatus and vehicles. As with fire stations 32 and 33 in the previous table, no cost is included in the facilities fee cost basis for Engines 32 and 33. Some other units listed in Table 3.2 also show zero in the facilities fee cost basis column because they are fully depreciated.

Table 3.2: Existing Fire Apparatus and Vehicles

Model Year ¹	Description ¹	Useful Life (Yrs) ¹	Replacement Cost ¹	Depr Repl Cost ²	Facilities Fee Cost Basis ³
2004	Engine 33 (Reserve)	15	\$ 850,000	\$ 0	\$ 0
2008	Brush Engine 30	15	\$ 450,000	\$ 120,000	\$ 120,000
2014	Rescue 30	15	\$ 650,000	\$ 433,333	\$ 433,333
2018	Truck 30	15	\$ 882,000	\$ 823,200	\$ 823,200
2018	Truck 30 Equipment	5	\$ 250,000	\$ 200,000	\$ 200,000
2004	Engine 31	15	\$ 850,000	\$ 0	\$ 0
2010	Engine 32	15	\$ 850,000	\$ 340,000	\$ 0
2010	Engine 33	15	\$ 850,000	\$ 340,000	\$ 0
2006	Engine 34	15	\$ 850,000	\$ 113,333	\$ 113,333
2018	Engine 35	15	\$ 850,000	\$ 793,333	\$ 793,333
2018	Engine 35 Equipment	5	\$ 250,000	\$ 200,000	\$ 200,000
2016	Chevy Tahoe (Fire Chief)	5	\$ 60,000	\$ 24,000	\$ 24,000
2015	Chevy Tahoe (Battalion Chief)	5	\$ 60,000	\$ 12,000	\$ 12,000
2015	Chevy Tahoe (Battalion Chief)	5	\$ 60,000	\$ 12,000	\$ 12,000
2014	Chevy Tahoe (Fire Prevention)	5	\$ 60,000	\$ 0	\$ 0
2016	Rescue Boat 32	5	\$ 60,000	\$ 24,000	\$ 24,000
2018	Chevy Silverado 2500	5	\$ 60,000	\$ 48,000	\$ 48,000
2019	Chevy Silverado 2500	5	\$ 60,000	\$ 60,000	\$ 60,000
2018	All Terrain Vehicle	5	\$ 35,000	\$ 28,000	\$ 28,000
2018	All Terrain Vehicle	5	\$ 35,000	\$ 28,000	\$ 28,000
2018	Command Trailer	5	\$ 35,000	\$ 28,000	\$ 28,000
Total				\$ 3,627,200	\$ 2,947,200

¹ Information provided by the Lathrop-Manteca Fire District; no equipment cost is shown for apparatus older than five years because that equipment would be fully depreciated

² Depreciated replacement cost using straight-line depreciation over the useful life of the asset

³ In most cases, the facilities fee cost basis equals the depreciated replacement cost in this table; However the depreciated replacement cost of Engines 32 and 33 is not included in the impact fee cost basis (see discussion in text)

Table 3.3 on the next page shows the estimated cost of planned future fire apparatus and vehicles that will be needed to serve the City of Lathrop as it grows. That estimated cost is used as the facilities fee cost basis for those items.

Table 3.3: Future Fire Apparatus and Vehicles

Description ¹	Estimated Cost ¹
Truck 35	\$ 1,500,000
Truck 35 Equipment	\$ 250,000
Engine 36	\$ 850,000
Engine 36 Equipment	\$ 250,000
Brush Engine 36	\$ 450,000
Brush Engine 36 Equipment	\$ 175,000
Engine 37	\$ 850,000
Engine 37 Equipment	\$ 250,000
Brush Engine 37	\$ 450,000
Brush Engine 37 Equipment	\$ 175,000
Engine 38	\$ 850,000
Engine 38 Equipment	\$ 250,000
Brush Engine 38	\$ 450,000
Brush Engine 38 Equipment	\$ 175,000
Chevy Tahoe (2)	\$ 120,000
Total	\$ 6,750,000

¹ Information provided by the Lathrop-Manteca Fire District

Table 3.4 summarizes the fire facilities fee cost basis from the three previous tables and also includes the cost of personal protective equipment for additional firefighters needed to staff future fire stations and apparatus.

Table 3.4 Impact Fee Cost Basis - Existing and Future Assets

Component	Facilities Fee Cost Basis
Existing Fire Stations ¹	\$ 14,040,000
Future Fire Stations and Training Facility ¹	\$ 30,200,000
Existing - Fire Apparatus and Vehicles ²	\$ 2,947,200
Future - Fire Apparatus and Vehicles ³	\$ 6,750,000
PPE for additional firefighters (39) ⁴	\$ 390,000
Total Cost	\$ 54,327,200

¹ See Table 3.1

² See Table 3.2

³ See Table 3.3

⁴ Estimated cost of personal protective equipment for additional firefighters at \$10,000 each

Average Cost per Square Foot

As discussed in Chapter 2, building area in square feet is used as the demand variable for fire facilities fee calculations in this report. Table 3.5 calculates an average cost per square foot by dividing the total facilities fee cost basis from Table 3.4 by the total existing and future square footage of building area at buildout of the City, as shown in Table 2.4 in Chapter 2.

Table 3.5 Fire Facilities Fee per Square Foot

Total Facilities Fee Cost Basis ¹	Total Building Square Footage ²	Facilities Fee per Sq Ft ³	Admin Charge (2%) ⁴	Total Facilities Fee per Sq Ft ⁵
\$54,327,200	104,392,140	\$0.52	\$0.01	\$0.53

¹ See Table 3.4

² Projected total existing and future building square footage at buildout of the City; see Table 2.4

³ Fire facilities fee per square foot of enclosed building area = total facilities fee cost basis / total building square footage

⁴ Administrative charge = impact fee per square foot X 2% (see text)

⁵ Total fire facilities fee per square foot = impact fee per square foot + administration charge

Administrative Charge. Table 3.5 also calculates a 2% administration charge that is added to the fire facilities fee. That charge is intended to cover the cost of accounting and reports and other administrative activities required by the Mitigation Fee Act, as well as the cost of periodic updates to the fee study.

The fire facilities fee per square foot shown in Table 3.5 can be applied directly to any future development project in the City of Lathrop, based on the amount of enclosed building square footage contained in that project. It is not necessary to convert the square foot fee to a fee per unit of development for various types of development.

Projected Revenue

Table 3.6 on the next page projects the total potential revenue from the fire facilities fees calculated in this chapter. Potential revenue is projected by applying the fire facilities fee per square foot to added building square footage (excluding schools and institutional development) from Table 2.3. That projection assumes that the total square footage of future development in the City of Lathrop is consistent with the forecast shown in Table 2.3 in Chapter 2.

Table 3.6 Projected Revenue

Impact Fee per Sq Ft ¹	Future Building Square Footage ²	Projected Revenue ³
\$0.52	62,421,000	\$32,484,803

¹ See Table 3.5

² Projected future building square footage in the City excluding schools/institutional buildings; see Table 2.3

³ Projected impact fee revenue through buildout excluding admin charge = impact fee per square foot X future building square footage

The total fire facilities fee revenue projected in Table 3.6 is about \$4.8 million less than the estimated \$37.34 million cost of future facilities, apparatus and equipment shown in this chapter.

Updating the Fees

The fire facilities fees calculated in this chapter are based current cost estimates. Over time, both costs and development plans are likely to change, so we recommend that these fees be reviewed periodically and adjusted if necessary to reflect actual costs and development plans.

Nexus Summary

As discussed in Chapter 1 of this report, Section 66001 of the Mitigation Fee Act requires that an agency establishing, increasing or imposing impact fees, must make findings to:

Identify the purpose of the fee;

Identify the use of the fee; and,

Determine that there is a reasonable relationship between:

- a. The use of the fee and the development type on which it is imposed;
- b. The need for the facility and the type of development on which the fee is imposed; and
- c. The amount of the fee and the facility cost attributable to the development project.

Satisfying those requirements also ensures that the fees meet the “rational nexus” and “rough proportionality” standards enunciated in leading court decisions bearing on impact fees and other exactions. (For more detail, see “Legal Framework for Impact Fees” in Chapter 1.)

The following paragraphs explain how the fire facilities fees calculated in this chapter satisfy those requirements.

Purpose of the Fee: The purpose of the fire facilities fees calculated in this chapter is protect the public health safety and welfare by ensuring that the Lathrop-Manteca Fire District has the facilities, apparatus, vehicles and equipment necessary to provide adequate fire protection and emergency medical services to new development in the City of Lathrop.

Use of the Fee. Fire facilities fees calculated in this chapter will be used to pay for future fire protection facilities, apparatus, vehicles and equipment identified in this report.

Reasonable Relationship between the Use of the Fee and the Development Type on Which It Is Imposed. The facilities, apparatus, vehicles and equipment to be funded by fire facilities fees calculated in this report will support fire protection and other emergency services provided by the Lathrop-Manteca Fire District to all new development in the City of Lathrop.

Reasonable Relationship between the Need for the Facilities and the Type of Development on Which the Fee Is Imposed. The need for facilities, apparatus, vehicles and equipment funded by fire facilities fees calculated in this report and needed to serve new development in the City of Lathrop is identified in the Lathrop-Manteca Fire District 2018 Master Plan.

Reasonable Relationship between the Amount of the Fee and the Facility Cost Attributable to the Development Project. The amount of the fire facilities fees charged to a development project will depend on the amount of building square footage added by that project. Thus, the fee charged to a development project reflects that project's proportionate share of the cost of Lathrop-Manteca Fire District facilities, apparatus, vehicles and equipment serving future development in the City of Lathrop.

4. Implementation

This chapter of the report contains recommendations for adoption and administration of impact fees, and for the interpretation and application of the development impact fees calculated in this study. It was not prepared by an attorney and is not intended as legal advice.

Statutory requirements for the adoption and administration of fees imposed as a condition of development approval (impact fees) are found in the Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

Adoption

As discussed in Chapter 1, California Health and Safety Code Section 13916, which is part of the Fire Protection District Law of 1987, does not allow the board of a fire protection district to charge a fee on new construction or development for the construction of public improvements or facilities or the acquisition of equipment.

Consequently, the fire facilities fees calculated in this report, which are intended to apply only to that portion of the District which lies within the City of Lathrop, must be adopted by the Lathrop City Council.

The form in which fire facilities fees are enacted should be determined by the City attorney. Procedures for adoption of fees subject to the Mitigation Fee Act, including notice and public hearing requirements, are specified in Government Code Sections 66016 and 66018. It should be noted that Section 66018 refers to Government Code Section 6062a, which requires that the public hearing notice be published at least twice during the 10-day notice period. Government Code Section 66017 provides that fees subject to the Mitigation Fee Act do not become effective until 60 days after final action by the governing body.

Actions establishing or increasing fees subject to the Mitigation Act require certain findings, as set forth in Government Code Section 66001 and discussed below and in Chapter 1 of this report.

Establishment of Fees. Pursuant to the Mitigation Fee Act, Section 66001(a), when an agency establishes fees to be imposed as a condition of development approval, it must make findings to:

1. Identify the purpose of the fee;
2. Identify the use of the fee; and
3. Determine how there is a reasonable relationship between:
 - a. The use of the fee and the type of development project on which it is imposed;
 - b. The need for the facility and the type of development project on which the fee is imposed

Examples of findings that could be used for fire facilities fees calculated in this study are shown below. The specific language of such findings should be reviewed and approved by the City Attorney. A more complete discussion of the nexus for the fire facilities fees can be found in Chapter 3 of this report.

Sample Finding: Purpose of the Fee. The City Council finds that the purpose of the fire facilities fees hereby enacted is to protect the public health, safety and welfare by requiring new development to contribute to the cost of fire protection facilities needed to mitigate the impacts of new development.

Sample Finding: Use of the Fee. The City Council finds that revenue from the fire facilities fees hereby enacted will be used to provide public facilities needed to mitigate the impacts of new development in the City and identified in the 2019 Lathrop-Manteca Fire Facilities Fee Study by NBS.²

Sample Finding: Reasonable Relationship: Based on analysis presented in the 2019 Lathrop-Manteca Fire Facilities Fee Study by NBS, the City Council finds that there is a reasonable relationship between:

- a. The use of the fees and the types of development projects on which they are imposed; and,
- b. The need for facilities and the types of development projects on which the fees are imposed.
- c. The amount of the fee and the facility cost attributable to the development project on which it is imposed.

Administration

The California Mitigation Fee Act (Government Code Sections 66000 et seq.) mandates procedures for administration of impact fee programs, including collection and accounting, reporting, and refunds. References to code sections in the following paragraphs pertain to the California Government Code.

Imposition of Fees. Pursuant to the Mitigation Fee Act, Section 66001(a), when an agency imposes an impact fee upon a specific development project, it must make essentially the same findings adopted upon establishment of the fees to:

1. Identify the purpose of the fee;
2. Identify the use of the fee; and
3. Determine how there is a reasonable relationship between:

² According to Gov't Code Section 66001 (a) (2), the use of the fee may be specified in a capital improvement plan, the General Plan, or other public documents that identify the public facilities for which the fee is charged. The findings recommended here identify this impact fee study as the source of that information.

- a. The use of the fee and the type of development project on which it is imposed;
- b. The need for the facility and the type of development project on which the fee is imposed

Per Section 66001 (b), at the time when an impact fee is imposed on a specific development project, the City is also required to make a finding to determine how there is a reasonable relationship between:

- c. The amount of the fee and the facility cost attributable to the development project on which it is imposed.

The sample findings proposed in the previous section are intended to satisfy the requirements of Sections 66001(a) and 66001(b).

In addition, Section 66006 (f) provides that a local agency, at the time it imposes a fee for public improvements on a specific development project, "... shall identify the public improvement that the fee will be used to finance." The required notification could refer to the improvements identified in this study.

Section 66020 (d) (1) requires that the agency, at the time it imposes an impact fee, provide the applicant with a written statement of the amount of the fee and written notice of a 90-day period during which the imposition of the fee can be protested. Failure to protest imposition of the fee during that period may deprive the fee payer of the right to subsequent legal challenge.

Section 66022 (a) provides a separate procedure for challenging the establishment of an impact fees. Such challenges must be filed within 120 days of enactment.

Collection of Fees. Section 66007 (a), provides that a local agency shall not require payment of fees by developers of residential projects prior to the date of final inspection, or issuance of a certificate of occupancy, whichever occurs first.

However, "utility service fees" (not defined) may be collected upon application for utility service. In a residential development project of more than one dwelling unit, Section 66007 (a) allows the agency to choose to collect fees either for individual units or for phases upon final inspection, or for the entire project upon final inspection of the first dwelling unit completed.

Section 66007 (b) provides two exceptions when the local agency may require the payment of fees from developers of residential projects at an earlier time: (1) when the local agency determines that the fees "will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy" or (2) the fees are "to reimburse the local agency for expenditures previously made."

Statutory restrictions on the time at which fees may be collected do not apply to non-residential development.

In cases where the fees are not collected upon issuance of building permits, Subsections 66007 (c) (1) and (2) provide that the City may require the property owner to execute a contract to pay the fee, and to record that contract as a lien against the property until the fees are paid.

Earmarking and Expenditure of Fee Revenue. Section 66006 (a) mandates that fees be deposited "with other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency, except for temporary investments, and expend those fees solely for the purpose for which the fee was collected." Section 66006 (a) also requires that interest earned on the fee revenues be placed in the capital account and used for the same purpose.

The language of the law is not clear as to whether depositing fees "with other fees for the improvement" refers to a specific capital improvement or a class of improvements (e.g., street improvements).

We are not aware of any municipality that has interpreted that language to mean that funds must be segregated by individual projects. And, as a practical matter, that approach would be unworkable in any event because it would mean that no pay-as-you-go project could be constructed until all benefiting development had paid the fees. Common practice is to maintain separate funds or accounts for impact fee revenues by facility category (e.g., fire protection or park improvements), but not for individual projects.

Impact Fee Exemptions, Reductions, and Waivers. In the event that a development project is found to have no impact on facilities for which impact fees are charged, such project must be exempted from the fees.

If a project has characteristics that will make its impacts on a particular public facility or infrastructure system significantly and permanently smaller than the average impact used to calculate impact fees in this study, the fees should be reduced accordingly. Per Section 66001 (b), there must be a reasonable relationship between the amount of the fee and the cost of the public facility attributable to the development on which the fee is imposed. The fee reduction is required if the fee is not proportional to the impact of the development on relevant public facilities.

In some cases, the agency may desire to voluntarily waive or reduce impact fees that would otherwise apply to a project as a way of promoting goals such as affordable housing or economic development. Such a waiver or reduction may not result in increased costs to other development projects, so the effect of such policies is that the lost revenue must be made up from other fund sources.

Credit for Improvements Provided by Developers. If the City requires a developer, as a condition of project approval to dedicate land or construct facilities or improvements for which impact fees are charged, the City should ensure that the impact fees are adjusted so that the overall contribution by the developer does not exceed the impact created by the development.

In the event that a developer voluntarily offers to dedicate land, or construct facilities or improvements in lieu of paying impact fees, the City may accept or reject such offers, and may

negotiate the terms under which such an offer would be accepted. Excess contributions by a developer may be offset by reimbursement agreements.

Credit for Existing Development. If a project involves replacement, redevelopment or intensification of previously existing development, impact fees should be applied only to the portion of the project that represents a net increase in demand for relevant City facilities, applying the demand factors used in this study to calculate that particular impact fee.

Annual Report. Section 66006 (b) (1) requires that once each year, within 180 days of the close of the fiscal year, the local agency must make available to the public the following information for each separate account established to receive impact fee revenues:

1. A brief description of the type of fee in the account or fund;
2. The amount of the fee;
3. The beginning and ending balance of the account or fund;
4. The amount of the fees collected and interest earned;
5. Identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the percentage of the cost of the public improvement that was funded with fees;
6. Identification of the approximate date by which the construction of a public improvement will commence, if the City determines sufficient funds have been collected to complete financing of an incomplete public improvement;
7. A description of each inter-fund transfer or loan made from the account or fund, including interest rates, repayment dates, and a description of the improvement on which the transfer or loan will be expended;
8. The amount of any refunds or allocations made pursuant to Section 66001, paragraphs (e) and (f).

The annual report must be reviewed by the City Council at its next regularly scheduled public meeting, but not less than 15 days after the statements are made public, per Section 66006 (b) (2).

Refunds under the Mitigation Fee Act. Prior to 1996, The Mitigation Fee Act required that a local agency collecting impact fees was required to expend or commit impact fee revenue within five years, or make findings to justify a continued need for the money. Otherwise, those funds had to be refunded. SB 1693, adopted in 1996 as an amendment to the Mitigation Fee Act, changed that requirement in material ways.

Now, Section 66001 (d) requires that, for the fifth fiscal year following the first deposit of any impact fee revenue into an account or fund as required by Section 66006 (b), and every five years thereafter, the local agency shall make all of the following findings for any fee revenue that remains unexpended, whether committed or uncommitted:

1. Identify the purpose to which the fee will be put;
2. Demonstrate the reasonable relationship between the fee and the purpose for which it is charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements for which impact fees are to be used;
4. Designate the approximate dates on which the funding necessary to complete financing of those improvements will be deposited into the appropriate account or fund.

Those findings are to be made in conjunction with the annual reports discussed above. If such findings are not made as required by Section 66001, the local agency could be required to refund the moneys in the account or fund, per Section 66001 (d).

Once the agency determines that sufficient funds have been collected to complete financing on incomplete improvements for which impact fee revenue is to be used, it must, within 180 days of that determination, identify an approximate date by which construction of the public improvement will be commenced (Section 66001 (e)). If the agency fails to comply with that requirement, it must refund impact fee revenue in the account according to procedures specified in Section 66001 (d).

Annual Update of the Capital Improvement Plan. Section 66002 (b) of the Mitigation Fee Act provides that if a local agency adopts a capital improvement plan to identify the use of impact fees, that plan must be adopted and annually updated by a resolution of the governing body at a noticed public hearing. The alternative, per Section 66001 (a) (2) is to identify improvements by applicable general or specific plans or in other public documents.

In most cases, the CIP identifies projects for a limited number of years and may not include all improvements needed to serve future development covered by the impact fee study. We recommend that the City Council cite this study as the public document identifying the use of the fees.

Indexing of Impact Fees. Where impact fees calculated in this report are based on current costs, those costs should, if possible, be adjusted periodically to account for changes in the cost of facilities or other capital assets that will be funded by the impact fees. That adjustment is intended to account for escalation in costs for land, construction, vehicles and other relevant capital assets. We recommend the *Engineering News Record* Building Cost Index as the primary basis for indexing construction costs. Costs for fire apparatus and vehicles should be adjusted based on recent purchases. Land costs should be adjusted based on changes in local land prices.

Training and Public Information

Effective administration of an impact fee program requires considerable preparation and training. It is important that those responsible for collecting the fees, and for explaining them

to the public, understand both the details of the fee program and its supporting rationale as detailed in this report.

Before impact fees are implemented, a staff training workshop is highly desirable if more than a handful of employees will be involved in collecting or accounting for fees.

It is also important that handouts providing information about impact fees to the public explain the purpose and use of particular impact fees and distinguish them from other types of fees, such as user fees for application processing.

Finally, anyone responsible for accounting, capital budgeting, or project management for projects involving impact fee funding must be fully aware of the restrictions placed on the expenditure of impact fee revenues. Fees must be expended for facilities and other capital assets identified in this report.

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