

January 6, 2009

NO: 09-005

SUBJECT: Acceptance of Annual Status Report on Receipt and Use of Development Impact Fees

### REPORT IN BRIEF

The Mitigation Fee Act (also known as AB1600, as codified in Government Code Section 66000, et seq.,) requires local agencies that impose development impact fees to report annually on the receipt and use of mitigation funding. Additionally, the Mitigation Fee Act requires that Council make periodic findings in order to justify continued receipt of unexpended funds, or possibly be subject to refunding portions of such funds.

Although City staff reports to Council and the public on the receipt and use of development impact funding through a variety of means throughout each fiscal year, this annual report is also prepared for Council review and acceptance.

Staff recommends that Council accept the annual summary report for the fiscal year ending June 30, 2008 (Attachment A).

#### BACKGROUND

The Mitigation Fee Act (hereafter "the Act"), requires each local agency that imposes development impact fees to prepare a report annually that provides specific information about the receipt and use of such fees. It codifies the legal requirement that fees on new development have the proper nexus to any project on which they are imposed. The fees must be separately accounted for and not co-mingled with other sources of general revenues. Interest on each fund or account must be credited to that fund or account and used only for the purposes for which the fees were collected.

The Act specifies that, within 180 days after the close of the fiscal year, the agency that collected the fees must make available to the public the following information regarding each fund or account:

- Brief description of the type of fee in the fund;
- Amount of the fee;
- Beginning and ending balance for the Fiscal Year;
- Amount of fees collected and interest earned;

- Identification of each public improvement on which impact fees were expended and amount of expenditure on each improvement, including the total percentage of the cost of the public improvement that was funded with impact fees;
- Identification of approximate date by which construction of a public improvement will commence, if the agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement;
- Description of each interfund transfer or loan made from the account or fund, including the public improvement on which the loaned funds will be expended, and in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan; and
- Amount of any refunds made due to inability to expend impact fees once a determination is made that sufficient impact fees have been collected to finance a public improvement, *and* the improvement remains incomplete, *and* the City has not determined an approximate date by which construction will commence.

The information described above was available for public inspection by the end of calendar year 2008 (December 22, 2008). The report containing such information must be reviewed by the City Council at a regularly scheduled public meeting *not less* than 15 days after the information is made available to the public. Taking into account the minimum 15-day availability requirement, the first available opportunity for Council review is January 6, 2009. Additionally, notice of time and place of meeting shall be mailed at least 15 days prior to the meeting to any interested parties who file a written request for such mailed notice. No such request for advance notification was received by the City.

Pursuant to the Act, the Council must make findings on the continued receipt of unexpended funds, whether committed or uncommitted. Such findings must be made every fifth year following the first receipt of fee revenue into its fund account. Council made the required findings for Housing Mitigation Fees, Park Dedication Fees and Traffic Mitigation Fees for the fiscal year ending June 30, 2006, and consequently does not need to make additional findings for these fees until FY 2010/2011. The required findings for the Transportation Impact Fee, adopted in FY 2003/2004, will be made for the fiscal year ending June 30, 2009.

#### **EXISTING POLICY**

Sunnyvale Municipal Code Chapters 3.50, 19.22 and 19.74.

#### DISCUSSION

The City identifies and reports on the receipt and use of development impact fees through several means. For example, the Council annually approves capital and special projects which identify that mitigation fees are being used to fund such projects. The Council also annually approves project carryovers, which identify capital and special projects funded with mitigation fees. In addition, the Council periodically reviews mitigation fees through nexus studies, e.g., the Transportation Strategic Program. Finally, the City's Long Term Financial Plans for each fund, and the detailed fund reviews in the City's annual budget transmittal letter, describe projects to be completed using development impact fee revenues.

Although the Council regularly reviews and approves the City's project plans to mitigate the effects of development, it must also review an annual report on such efforts, and make periodic findings on the continued receipt of unspent impact fee revenue (Government Code Section 66000 et seq.) This annual report must be made available to the public within 180 days of the close of the fiscal year as previously described.

The City currently assesses several development impact fees subject to the AB1600 reporting requirements, including Housing Mitigation Fees, Park Dedication Fees assessed pursuant to Sunnyvale Municipal Code Chapter 19.74, Sense of Place Fees, and Transportation Impact Fees. Though no longer assessed on development in the City, the City also maintains a fund balance of Traffic Mitigation Fees, which are also included in this year's report. The Traffic Mitigation Fee was created in 2000 as a key component of the Transportation Strategic Program. Its purpose was to provide an interim revenue mechanism to recognize the impact of new development on future forecast transportation deficiencies, and was meant to be replaced by the Transportation Impact Fee which became effective in 2004.

Exempt from these reporting requirements are the City's Park Dedication Fees assessed pursuant to Sunnyvale Municipal Code Chapter 18.10. This Code section provides that park fees specified in the Subdivision Map Act assessed pursuant to the Quimby Act (Government Code Section 66477) are not reportable under the Mitigation Fee Act requirements, per Government Code Section 66000(b). These fees are assessed on certain residential subdivisions in order to purchase land, buy equipment or construct improvements in neighborhood and district parks and recreational facilities serving the subdivision. Also exempt from the reporting requirements are development impact fees assessed pursuant to development agreements negotiated prior to January 1, 2004 (Government Code Section 65865(e)). The City maintains a balance of exempt fees, mainly consisting of Park Dedication Fees assessed pursuant to Sunnyvale Municipal Code Chapter 18.10, which were included in prior year reports because the fee revenue was not previously separated from

non-exempt fee revenue. Beginning in FY 2006/2007, additional sub-funds were created in order to correctly separate and categorize exempt and non-exempt impact fees. The City received no Park Dedication Fees which are reportable under AB1600 during FY 2007/2008, as is reflected in the Park Dedication Fee section of Attachment A.

The Act further requires that findings be made every fifth year following the first receipt of mitigation fee revenue into its fund account. Such findings are necessary in order to justify continued receipt and use of unexpended fee revenue. The findings must address each of the following:

- Identify the purpose to which the fee is to be put;
- Demonstrate a reasonable relationship between the fee and the purpose for which it was originally charged; and
- Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements along with the approximate dates on which the anticipated funding is expected to be deposited into the fund.

If the agency no longer needs the funds for the purposes collected, or if the agency fails to make required findings, or perform certain administrative tasks prescribed by AB1600, the agency may be required to refund prorated portions of unexpended fee revenues to owners of the properties upon which the fees for the improvement were imposed, and any interest earned on those funds.

The City Council made the required findings for Housing Mitigation, Park Dedication and Traffic Mitigation Fund balances for the fiscal year ending June 30, 2006. The Transportation Impact Fee, established January 1, 2004, has not reached the five-year finding requirement.

#### FISCAL IMPACT

In FY 2007/2008, the City received approximately \$11.8 million in development impact fees reportable under the Mitigation Fee Act. This fee revenue will be used to fund public improvements necessary to meet the demand for services resulting from commercial and residential development in the City.

#### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's officialnotice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

#### **ALTERNATIVES**

- 1. Accept the FY 2007/2008 Status Report on the Receipt and Use of Development Impact Fees.
- 2. Do not accept the FY 2007/2008 Status Report.
- 3. Direct staff to perform additional study.

### RECOMMENDATION

Staff recommends Alternative 1, to Accept the FY 2007/2008 Status Report on the Receipt and Use of Development Impact Fees.

Reviewed by:

Mary J. Bradley, Director of Finance Prepared by: Pete Gonda, Senior Management Analyst, Finance

Reviewed by:

David A. Lewis, Director of Parks and Recreation

Reviewed by:

Hanson Hom, Director of Community Development

Reviewed by:

Marvin Rose, Director of Public Works

Approved by:

Gary M. Luebbers City Manager

#### **Attachments**

A. FY 2007/2008 Annual Status Report on Receipt and Use of Development Impact Fees

**Fee/Fund:** Housing Mitigation Fee (Fund 70)

Fee Description: Fees paid by developers of high intensity industrial projects that result in new floor area ratios to

mitigate demand for affordable housing (Sunnyvale Municipal Code Chapter 19.22)

## FY2007/2008 Fee Schedule:

\$8.00 per applicable square foot

## FY2007/2008 Receipt and Use

Beginning Balance	\$	7,647,947
New Fees Collected		6,071,574
Interest		488,400
Total Resources	<u>\$</u>	14,207,921

	Construction Schedule							
			% Funded	Origination	Planned Completion	Interfund		Interfund
<u>Expenditures</u>			by Fee	Year	Year	Loans	Refunds	Transfers
BMR Acquisition	\$	136,237	100%	93/94	Ongoing	None	None	None
Housing for City/Public School Employees		2,429	100%	01/02	Ongoing	None	None	None
Downtown/388 Charles Street		1,081	100%	05/06	09/10	None	None	None
Housing Trust		300,000	100%	05/06	07/08	None	None	None
Pre-Development Costs		15,787	100%	06/07	07/08	None	None	None
Onizuka Base Realignment/Closure		14,652	0%	06/07	08/09	None	None	General Fd
Total Expenditures	\$	470,186						

Ending Balance <u>\$ 13.737.736</u>

#### **Description of Projects**

814700 BMR Acquisition – This project serves low- to moderate-income households to provide education and to help purchase BMR units, acquire units as part of a forced sale, and acquire units to be held for resale so that units are not lost from the BMR inventory.

823560 Housing for City/Public School/Child Care Employees - This project provides educational, rental, and homeownership assistance to Sunnyvale teachers and City employees due to the high cost of living in the region.

825930 City Owned Properties - Downtown/388 Charles Street - This project provides funding for repairs, general maintenance, and administration of the property at 388 Charles Street. The property is projected to be sold for \$674,000 in FY 2010/2011.

826010 Housing Trust Fund of Santa Clara County – This project provides for a contribution to the Housing Trust Fund's Phase III funding and operations strategy. This support from the City allows the Trust to invest funds into the creation of affordable rental homes, homeless and special-needs housing, and support for first-time homebuyers designed to help a minimum of 1,000 families per year for three years.

826520 Pre-Development Costs on Affordable Housing Sites - This project provides funds for the development of a preliminary feasibility plan for the City-owned property at Fair Oaks and Route 237, as well as for appraisal costs to assist with lease negotiations with the County of Santa Clara on a County-owned site at Fair Oaks and Garland Avenue.

826550/1 - Onizuka AFS Base Realignment and Closure (BRAC) - Phase 1&2 - This project provides funds for the Onizuka Air Force Station closure. The goal of the City's participation is to develop a reuse plan that reflects the best interests of Sunnyvale, balancing homeless needs with other community development objectives.

**Fee/Fund:** Park Dedication Fee (Fund 141, Subfund 200)

Fee Description: Fees paid in lieu of land dedication for park use by developers of multi-family housing (SMC

Ch.19.74)

## FY2007/2008 Fee Schedule:

\$96.00 Average Fair Market Value per square foot

## FY2007/2008 Receipt and Use

Beginning Balance New Fees Collected	\$  
Interest Total Resources	\$ _ <u>=</u>
<u>Expenditures</u>	
Total Expenditures	\$ 
Ending Balance	\$ 

Fee/Fund: Traffic Mitigation Fee (Fund 385, Subfund 950)

**Fee Description:** Specific fee amounts assessed as a condition of development to mitigate increased demands for

traffic improvements.

## FY2007/2008 Fee Schedule:

This fee has was superseded by the Transportation Impact Fee (TIF) in FY 2003/2004, but occasionally received for development projects approved prior to adoption of the TIF.

## FY2007/2008 Receipt and Use

Beginning Balance New Fees Collected Interest	\$ 4,240,646 - 180,928						
Total Resources	\$ 4,421,574						
			Const	ruction Schedule			
		% Funded	Origination	Planned Completion	Interfund		Interfund
<u>Expenditures</u>		by Fee	Year	Year	Loans	Refunds	Transfers
Future Traffic Signal Construction/Mod	\$ 78,247	100%	95/96	16/17	None	None	None
Borregas Ave Bicycle Corridor	17,724	19%	99/00	08/09	None	None	Cap Proj-Gas Tax
Frances St Corridor Improvements	69,631	18%	03/04	08/09	None	None	None
Mary Ave. Extension Analysis	215,088	90%	05/06	08/09	None	None	None
Caltrain Northside Pedestrian Access Impr.	2,359	25%	05/06	07/08	None	None	Cap Proj-GF Assets
Total Expenditures	\$ 383,048		l				
Ending Balance	\$ 4,038,526						

### **Description of Projects**

816000 Future Traffic Signal Construction/Mod - This project provides funding for major signal modifications and/or installing new traffic signals as necessitated by traffic conditions.

821870 Borregas Avenue Bicycle Corridor – This project involves the design and construction of the Borregas Avenue Bicycle Corridor which includes new bike/pedestrian bridges over US-101 and SR-237. The construction of overcrossings will eliminate approximately two miles of detours which currently exist for bicyclists and pedestrians who wish to cross over the freeways. The project will also improve access to the Bay Trail, other recreational facilities in Baylands Park and the Valley Transportation Authority (VTA) Light Rail. The project provides safer and more convenient bicycle and pedestrian access between central Sunnyvale (residential areas and Caltrain) and north Sunnyvale (major employment area and light rail) along the north-south Borregas Avenue corridor by avoiding high speed, heavy traffic volume arterial corridors and freeway interchanges.

824910 Frances Street Transit Corridor Improvements - This project will create a pedestrian-scale transit corridor that connects pedestrians and transit riders from seven Valley Transportation Authority (VTA) bus routes to the Caltrain Multimodal Station, Downtown Commercial Center, Town Center Mall, Mozart office buildings, and the new City Plaza.

825630 Mary Ave. Extension Engineering/Environmental Analysis - A major transportation capacity improvement is needed to adequately serve the Moffett Park area. This project provides planning to meet future transportation needs. This project will look at alternative alignments and determine a recommended project alignment.

825990 Caltrain Northside Pedestrian Access Improvements - The Caltrain North Side Pedestrian Access Improvements project provides planning and conceptual engineering associated with providing a pedestrian and bicycle crossing from Hendy Avenue to the Sunnyvale Caltrain Station and other amenities to improve the connection between the neighborhood north of the Caltrain tracks with the Caltrain station and downtown.

Fee/Fund: Transportation Impact Fee (Fund 385, Subfund 960)

Fees adopted pursuant to the Transportation Strategic Program to fund major transportation projects **Fee Description:** 

necessary to support land use plans (SMC Ch. 3.50)

## FY2007/2008 Fee Schedule:

A. Impact Fee—Area South of Route 2	237
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<ul> <li>Single Family detached, per dwelling unit</li> </ul>	\$ 1,933.19
<ul> <li>Multi-family attached, per dwelling unit</li> </ul>	\$ 1,186.71
<ul> <li>Office, per 1,000 square feet</li> </ul>	\$ 2,851.94
<ul> <li>Retail, per 1,000 square feet</li> </ul>	\$ 3,579.27
<ul> <li>Industrial, per 1,000 square feet</li> </ul>	\$ 1,416.40
<ul> <li>Research and Development, per 1,000 square feet</li> </ul>	\$ 1,875.77
<ul> <li>Hotel, per room</li> </ul>	\$ 1,167.57
<ul> <li>Uses not enumerated, per trip</li> </ul>	\$ 1,914.05
Fee—Industrial Area North of Route 237	
<ul> <li>Industrial, per 1,000 square feet</li> </ul>	\$ 3,247.80

## B. Impact

•	Industrial, per 1,000 square feet	\$ 3,247.80
•	Research and Development, per 1,000 square feet	\$ 4,293.70
•	Destination Retail, per 1,000 square feet	\$10,293.86
•	Neighborhood Retail, per 1,000 square feet	\$ 5,146.93
•	Hotel, per room	\$ 3,357.90
•	Uses not enumerated, per trip	\$ 5,504.74

### FY2007/2008 Receipt and Use

 Beginning Balance
 \$ 4,375,751

 New Fees Collected
 5,773,854

 Interest
 361,117

 Total Resources
 \$ 10,510,722

#### Construction Schedule

		% Funded	Origination	Planned Completion	Interfund		Interfund
<u>Expenditures</u>		by Fee	Year	Year	Loans	Refunds	Transfers
Transportation Model Update	\$ 10,528	100%	05/06	27/28	None	None	None
Mary Ave Extension Analysis	64,841	10%	05/06	08/09	None	None	None
Washington/Mathilda Intersection	12	100%	06/07	08/09	None	None	None
Project Administration In-Lieu	52,922		07/08	27/28	None	None	Internal Svcs
General Fund In-Lieu	 13,921		05/06	27/28	None	None	General Fund
Total Expenditures	\$ 142,224						

Ending Balance \$ 10,368,498

## **Description of Projects**

825530 Transportation Model Update - This project provides for a computerized Transportation Model in order to determine long-range projections of roadway capacity to adequately plan for infrastructure needs and provide the City with a fair and accurate valuation of the Transportation Impact Fee.

825630 Mary Ave. Extension Engineering/Environmental Analysis - This project provides funding for a study for a major transportation capacity improvement to serve the Moffett Park area.. The study includes conceptual engineering and CEQA environmental analysis of potential Mary Avenue Extension and other Mathilda corridor alignments, provide information for the determination of a plan line, and complete Caltrans Project Study Report requirements.

826900 Washington Avenue/Mathilda Avenue Intersection Widening - This project provides the City share for the widening of the intersection at Washington Avenue and Mathilda Avenue. This intersection requires the addition of a westbound left turn lane. This improvement is being constructed by the Town Center developer.

Project Administration Fund In-Lieu – Transfer to the Project Management Services General Service Fund.

General Fund In-Lieu – Transfer to the General Fund.

**Fee/Fund:** Sense of Place Fee (Fund 385, Subfund 970)

Fee Description: Fees paid by developers in areas in which desired public improvements exceed the requirements of

other areas of the City, including those with special land use or public improvement plans.

### Fee:

\$1,000 per unit in the applicable areas

## FY2007/2008 Receipt and Use

Beginning Balance	\$ 131,000
New Fees Collected	-
Interest	 916
Total Resources	\$ 131,916

	<u>Construction Schedule</u>							
			% Funded	Origination	Planned Completion	Interfund		Interfund
<u>Expenditures</u>			by Fee	Year	Year	Loans	Refunds	Transfers
Pedestrian & Bicycle Circulation Plan	\$	25,000	25%	05/06	07/08	None	None	None
Streetsacpe & Sense of Place		32,128	6%	05/06	08/09	None	None	None
Total Expenditures	\$	57,128						
Ending Balance	\$	74,788						

### **Description of Projects**

825980 Tasman/Fair Oaks Area Pedestrian & Bicycle Circulation Plan - This project provided more detailed planning for the pedestrian enhancements identified in the Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan.

826570 Tasman/Fair Oaks Area Streetscape and Sense of Place - This capital project will implement enhancements identified in the Tasman/Fair Oaks Pedestrian and Bicycle Circulation Plan. It will improve livability for the residents in the neighborhood and encourage increased pedestrian, bicycle and transit use through streetscape improvements, land use planning and architectural design.