



Department: Community Development
Cost Center: 4008
For Agenda of: 9/17/2024
Placement: Public Hearing
Estimated Time: 45 minutes

FROM: Timmi Tway, Community Development Director
Prepared By: David Amini, Housing Coordinator

SUBJECT: ADOPT A RESOLUTION AND INTRODUCE AN ORDINANCE TO AMEND SECTION 4.56.050 (PAYMENT OF FEES) OF THE MUNICIPAL CODE TO ESTABLISH A DEVELOPMENT IMPACT FEE DEFERRAL PROGRAM FOR ELIGIBLE AFFORDABLE HOUSING PROJECTS

RECOMMENDATION

1. Adopt a Draft Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, superseding Resolution No. 9903 (2007 Series) providing for the deferral of city-wide development impact fees for eligible affordable housing projects"; and
2. Introduce a Draft Ordinance entitled, "An Ordinance of the City Council of the City of San Luis Obispo, California, establishing a development impact fee deferral program for eligible affordable housing projects"; and
3. Authorize the Community Development Director to approve applications for impact fee deferrals and execute agreements therefor, in forms approved by the City Attorney's Office. The Director may refer approvals to City Council on an as-needed basis or concurrently with Affordable Housing Fund (AHF) awards.

REPORT-IN-BRIEF

In an effort to advance the Major City Goals of Housing and Homelessness, Council adopted Resolution 9903 (2007) which allows, upon request and at the discretion of the Community Development Director, deferral or waiver of impact fees imposed by the City on affordable housing projects. Deferral of impact fees has helped accelerate the production of affordable housing units in the City by reducing costs as well as enabling developers to leverage additional competitive tax credit funding. The updated resolution and ordinance proposed by staff will create a formal program for affordable housing developers to request and secure certain impact fee deferrals, in addition to cleaning up existing municipal code language related to the timing of development impact fee collection. All deferrals through the program will be in the form of a loan rather than an outright waiver of the fees. This will ensure that all infrastructure improvements secured through development impact fees will continue to be funded.

POLICY CONTEXT

The City's Major City Goal for housing and homelessness states:

Support the expansion of housing options for all, and continue to facilitate the production of housing, including the necessary supporting infrastructure, with an emphasis on affordable and workforce housing as well as accessibly connected development. Collaborate with local non-profit partners, non-governmental agencies, the county, the state, and federal governments to advocate for increased funding and implementation of comprehensive and effective strategies to prevent and reduce homelessness.

The Goal includes implementation measure no. 5 to implement Below Market Rate housing best practices.

The City recently received the Prohousing designation from the State Housing and Community Development Department for innovation in housing policy and a demonstrated commitment to developing solutions to the state's housing crisis.

The City's 6th Cycle Housing Element includes a Goal for Affordability, supported by the following policies and programs:

Program 2.9 - Assist with the issuance of tax-exempt bonds, tax credit financing, loan underwriting or other financial tools to help develop or preserve at least 20 affordable units annually through various programs. The proposed resolution and draft Ordinance allow for deferral of impact fees in the form of a loan to the project. The financing mechanism of a loan, rather than a waiver of impact fees, enables projects to leverage the loan amount as soft funding, adding points to competitive tax credit financing applications.

Program 6.16 - Incentivize 20 affordable housing developments per year during the planning period consistent with SLOMC Affordable Housing Incentives. The impact fee deferral program established by the ordinance will provide a standardized process for requesting and implementing impact fee deferral. This will incentivize development of affordable housing.

DISCUSSION

Background

Per Resolutions 9131 (2000 Series) and 9903 (2007 Series), the City has allowed, upon request, the waiver or deferral of certain development impact fees for projects that provide below market rate residential units beyond the inclusionary requirement or for projects by

non-profit affordable housing developers to defer the up-front cost of impact fees¹. This effort has helped accelerate the production of below-market-rate units, especially those constructed by affordable housing developers using tax credits. Over the last decade, 300 units of housing across 8 projects have been constructed with the assistance of impact fee deferrals.

Resolution No. 9903 allows for the waiver of impact fees in addition to deferral of fees. The outright waiver of impact fees creates a loss of revenue to the City's impact fee programs, which may delay the City's ability to construct improvements paid for using impact fees. To avoid this loss of revenue, the City has only executed impact fee deferral loans since Resolution No. 9903 was adopted. The deferral of fees provides a defined term of repayment of fees and ensures no ultimate loss of revenue to cover the ongoing impacts of the development.

Impact fee deferrals have successfully provided important financial incentives over the years to affordable housing projects. Impact fee deferral loans, combined with other funding sources such as Affordable Housing Fund (AHF) awards, Community Development Block Grant (CDBG) or other grant awards, all count as committed funding sources in competitive tax credit applications. The more committed funding sources a project has, the more competitive it will be in the tax credit allocation process, which is typically the final step in securing financing for affordable housing projects.

At this time, a program update is recommended to formally remove the option of fee waivers, implement best practices, and continue to incentivize tax-credit funded below market rate units. The attached resolution and ordinance will formalize the existing practices of the Community Development Department and would not implement substantial changes.

Proposed Program Update

The proposed resolution provides clarity for developers by creating a formal program for impact fee deferral. The program includes application guidance and procedures, including identification of fee categories that may be deferred, a defined loan term and interest rate, and removing the option of waiving impact fees altogether.

The Resolution allows for the promulgation of Development Impact Fee Deferral Program Guidelines (see Attachment C), which will further define the scope of the program, including eligibility, approval authority, the application process, repayment, and other terms. After submitting an application for fee deferral to the City and receiving approval from the Community Development Director, the developer will be required to execute a Development Impact Fee Deferral Deed of Trust and Promissory Note, which will be recorded on the property. The Promissory Note describes the deferral as a loan on the property for a term of 20 years and shall account for an annual simple fixed interest rate

¹ The City collects development impact fees in accordance with the [Mitigation Fee Act](#) to cover increased infrastructure and services required to serve increased development within the City. Impact fees include fees such as park improvement fees, police and fire capacity base fees, and traffic impact fees.

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of three percent, to be paid in full at the end of the term, in accordance with the draft Ordinance. A 20- year term would provide time for project construction and permanent loan conversion and allow the City fees to be paid with a fixed, three percent simple interest rate. Previous impact fee deferral loans approved by the City have had terms ranging from 30 to 55 years, with interest rates ranging from 3 to 4 percent.

Wastewater and water development impact fees have historically not been deferred, as the revenue from these fees offsets the need to increase rates for existing users. Therefore, impact fees that would be eligible for deferral under the program would include: police and fire base fees, parkland improvement fees, and transportation improvement fees.

Additionally, the proposed development impact fee deferral update only applies to City-wide impact fees; it does not apply to application or user fees, assessments, or special taxes for infrastructure improvements applicable to special benefit areas. Development related processing fees for very-low and low income housing projects are separately allowed to be waived upon request by City Council Resolution No. 8415 (1995 Series).

The proposed ordinance also clarifies the timing of the City's collection of development impact fees to ensure consistency with state law. For all development projects that are not eligible or do not apply for the development impact fee deferral option, all development impact fees must be paid to the city upon final inspection or the date of the certificate of occupancy, whichever occurs first, unless the City requires payment of fees earlier (issuance of building permit) as allowed by Government Code 66007.

The proposed resolution supersedes and replaces Resolution No. 9903 (2007 Series) adopted by this Council on June 5, 2007, which allowed for the deferral and waiver of impact fees for affordable housing projects Resolution No. 9903 (2007 Series) also includes applicability of impact fee waivers for Accessory Dwelling Units (ADUs), however, California Government Code Section 66324 directly regulates impact fees applicable to ADUs, and therefore this provision is removed from the proposed update.

Previous Council or Advisory Body Action

On May 2, 1995, the City Council adopted [Resolution No. 8415](#) (1995 Series) (page 35) which waived development review fees for affordable housing units at the direction of the Community Development Director.

On November 21, 2000, the City Council adopted [Resolution No. 9131](#) (2000 Series) for the purpose of waiving citywide development impact fees for affordable housing units in excess of inclusionary requirements or developed by non-profit housing corporations.

On June 5, 2007, the City Council adopted [Resolution No. 9903](#) (2007 Series) which superseded and replaced Resolution No. 9131 (2000 Series), to allow for development impact fee waivers for voluntary affordable housing units developed by private developers (such as ADUs) in addition to projects that exceed the number required to meet the City's inclusionary requirements and projects by non-profit developers.

Public Engagement

Staff consulted developers of affordable housing projects, who voiced their support for continued fee deferrals through the program established by the proposed ordinance and resolution. Developers also concurred with the 20 year term of impact fee loans, as well as the timeline of the application and conditions of the deferral agreement. This item has been noticed in compliance with the City’s notification requirements.

CONCURRENCE

The Council Agenda Report was reviewed by the Community Development Department, Public Works, Finance Department, City Attorney, Utilities Department, City Administration for concurrence.

ENVIRONMENTAL REVIEW

The proposed resolution and draft Ordinance are exempt from the California Environmental Quality Act (CEQA), because it is not a “project” under Public Resources Code § 21065 in that the impact fee deferral program would not cause either a direct or reasonably foreseeable indirect physical change in the environment. Every development project subject to a development impact fee deferral loan would be required to undergo applicable development review, including CEQA compliance or finding of exemption.

FISCAL IMPACT

Budgeted: Yes

Budget Year: 2024-25

Funding Identified: Yes

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$0	\$	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$0	\$0	\$0	\$0

There is no financial impact directly associated with updating the development impact fee deferral program for eligible residential projects. The indirect impact of fee deferrals would be the delay in availability of impact fee revenue. Over the last 10 years, 8 impact fee deferral loans have been given to affordable housing projects, totalling \$5 million in deferred impact fee revenue, with repayment terms ranging from 30 to 55 years at 3 percent interest. The proposed resolution would update the repayment term on all future deferral loans to 20 years, reducing the indirect impact on the City’s impact fee funds. Staff anticipates that about one project per year will be given an impact fee deferral loan under the program, with an average amount of about \$500,000 in impact fees deferred per project.

ALTERNATIVES

1. ***Council could decide not to approve the resolution and introduce the draft Ordinance.*** Council could direct staff to continue to implement fee deferrals through the existing resolution. This action is not recommended by staff because the resolution and draft Ordinance regarding the development impact fee deferral program provides updates and guidelines for clarity, removes the option for fee waivers consistent with current practice, and creates a formal application process for affordable housing developers.
2. ***Council could provide additional direction on program specifics, such as program applicability and loan term.*** Staff requests that Council provide specific direction on any proposed changes, which could be incorporated into a revised resolution to be presented with the second reading of the proposed ordinance.
3. ***Council could delay implementation of the new Ordinance until the comprehensive development impact fee study is completed.*** All development impact fees levied by the City will be reviewed by Council and staff at a later date through this comprehensive study, which will result in an update to the development impact fee schedule. This action is not recommended by staff. The updated impact fees would continue to be subject to deferrals under the existing resolution as well as the updated resolution that is being proposed.

ATTACHMENTS

- A - Draft Ordinance establishing the development impact fee deferral program and clarifying eligibility and terms
- B - Draft Resolution modifying the development impact fee deferral program.
- C - Draft Development Impact Fee Deferral Guidelines
- D - Draft Development Impact Fee Deferral Application
- E - Draft Deferral Agreement
- F - Standard form Loan Deed of Trust
- G - Standard form Loan Promissory Note