



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: March 6, 2018

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Resolution Of The City Council Of The City Of Emeryville Approving A Park And Recreation Facility Impact Fee Credit For The Sherwin Williams Mixed Use Project And Authorizing The City Manager To Execute A Park And Open Space Improvement Agreement With SWACE, LLC

RECOMMENDATION

Staff recommends that the City Council grant to SWACE, LLC a credit for the full amount of the Park and Recreation Facility Impact Fee that will be assessed at the time of construction of the Sherwin Williams Mixed Use Project, for which the Preliminary Development Plan was approved by the City Council on November 1, 2016, and authorize the City Manager to execute a Park and Open Space Improvement Agreement with SWACE, LLC.

BACKGROUND

Ordinance No. 16-006 was passed by the City Council on November 1, 2016 and became effective on December 1, 2016, adopting a Planned Unit Development zoning designation (PUD) and approving a Preliminary Development Plan (PDP) for the former Sherwin Williams paint factory site and an adjacent City-owned parcel. The Project approved by the PUD/PDP will redevelop the site, including the reuse of an existing 74,000 square foot significant structure for office use, construction of four new buildings that will accommodate up to 500 dwelling units and a minimum of 2,000 square feet and a maximum of 8,000 square feet of ground floor commercial/retail space, development of approximately 3.5 acres of public open space, and construction of two new roads, Hubbard Street extension and new 46th Street. The applicant has applied for a Final Development Plan (FDP) for the four new buildings, which was approved by the Planning Commission on February 22, 2018, and an FDP for Park and Open Spaces within the complex, which was approved by the Planning Commission on December 14, 2017. The latter includes design of the Greenway extension, a public park that includes the City parcel and a portion of the Sherwin Williams property, and public plazas within the site. At the time of building permit issuance for the four new buildings, the applicant will be assessed a Park and Recreation Facility Impact Fee. The applicant has applied that for a credit of this fee, as they will be designing and constructing about 3.5 acres of park and open space that are eligible to be funded by the fee. (See Attachment 1, Applicant's Request Letter.)

On July 15, 2014, the Emeryville City Council adopted Ordinance No. 14-008 (the "Impact Fee Ordinance") adding Article 19 of Chapter 5 of Title 9 to the Emeryville Municipal Code, titled "Development Impact Fees". This Article establishes the authority for the City to impose fees on development projects for the purpose of mitigating the impacts that the projects may have upon the City's ability to provide public facilities. Also on July 15, 2014, the City Council adopted Resolution No. 14-104, establishing a Parks and Recreation Facility Impact Fee. By this resolution, the City Council approved and adopted a "Park and Recreation Facilities Development Impact Fee Study" prepared by Willdan Financial Services (the "Willdan Park Impact Study"), dated April 24, 2014. The Willdan Park Impact Study specifically references, and is based upon, the City's Parks and Recreation Strategic Plan (the "Strategic Plan"). The study assigned cost estimates to each of the planned and proposed park facilities set forth in the Strategic Plan, and then determined the cost per capita to provide those facilities. The City Council relied on those calculations when it approved the Impact Fee schedule that would be levied on each development. Both the Willdan Park Impact Study and the Strategic Plan include the expansion of the Emeryville Greenway as a priority project, and it was clear that the proceeds collected would be used to fund these improvements, including public park and Greenway facilities on the Sherwin Williams site.

Section 9-5.1911 of the Planning Regulations allows for an application for a potential impact fee credit provided certain requirements are met. The remainder of this staff report outlines how Lennar's request for a credit of the Park and Recreation Facility Impact Fee complies with the provisions of Section 9-5.1911.

The City Council held a study session on November 21, 2017 on the Sherwin Williams Park and Open Space Final Development Plan (FDP) that included a discussion of Lennar's request for a Park and Recreation Facility Impact Fee credit. The Council expressed general support of the fee credit request at that time.

DISCUSSION

Project's Eligibility for a Park and Recreation Facility Impact Fee Credit

The Project incorporates significant improvements to park and recreation facilities contemplated in the City's Strategic Plan with respect to the Emeryville Greenway. As part of the 2.08 acres of zoned open space on the Sherwin Williams property and the 1.45 acres of zoned open space on the City property, the Project extends the Emeryville Greenway through the site from Horton Landing Park to Halleck Street. The proposed park includes City-owned land and part of the Sherwin Williams site, and will connect with the Emeryville Greenway that will run through the Project. The applicant will design and construct improvements to both City-owned land and on the Sherwin Williams property.

By implementing projects that form the basis of the Impact Fee Ordinance with respect to the Emeryville Greenway, the Project directly effectuates the purposes of the fee, and is thus eligible for a fee credit. Without the credit, the Project would be required to bear more than its fair share of the costs of providing the set of park facilities identified in the Strategic Plan.

Fee Credit Application

Planning Code Section 9-5.1911 specifies that "[a]n applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a specified public facility to the City." An application for a credit must demonstrate compliance with six requirements to the satisfaction of the City Council as listed in Planning Code Section 9-5.1911 (a)-(f), as further discussed below.

- a. *Describe the public facilities (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of specified public facilities in the relevant implementing resolution.*

The Project encompasses the development of the 8.55-acre Sherwin Williams property and the adjacent 1.45-acre City-owned parcel, for a total area of approximately 10 acres, including approximately 3.5 acres of public park and open space, the design of which was approved by the Planning Commission on December 14, 2017 (see Attachment 2, PDP Land Use Diagram, and Attachment 3, FDP Site Plan).

As described in greater detail below, the Project incorporates the expansion of, and improvements to, the Emeryville Greenway, as contemplated by the Strategic Plan. These improvements are listed in the Willdan Park Impact Study (see Attachment 4), and various alternative concepts for the Sherwin Williams site are described and illustrated on pages 58-60 of the Strategic Plan (see Attachment 5). Planning Code Section 9-5.1924 defines a "public facility" as "any public improvements, public services, or community amenities.... for which the City has adopted an implementing resolution." Accordingly, a fee credit is requested under the Impact Fee Ordinance and Resolution No. 14-104, which was intended to further "the General Plan's goals with respect to parks and recreational facilities."

- b. *Identify the estimated cost of providing the specified public facilities (including construction, design, and/or land acquisition) for which the applicant is requesting credit.*

The total hard and soft costs associated with the improvements to the Emeryville Greenway and related park and open space is estimated by the applicant to be approximately \$3,497,340 (please see below for cost break-down). The applicant is seeking a fee credit no greater than the amount that the Project would otherwise be assessed under the Impact Fee Ordinance, which is currently estimated to be \$2,225,860 according to the 2017-2018 Impact Fee schedule (please see below for detailed estimate).

While it is not possible to develop a precise cost estimate for park construction at this time, the Public Works Department has determined that the cost of the Greenway and the public park will exceed the amount collected through the Park and Recreation Facility Impact Fee.

Estimated Park Costs

Area	Size (acres)	Estimated Soft Costs	Estimated Hard Costs	Estimated Total Costs
City Park Parcel	1.45	\$75,000	\$1,579,050	\$1,654,050
Project Open Space Adjacent to Greenway	0.99	\$50,000	\$1,078,110	\$1,128,110
Project Open Space Adjacent to City Park Parcel	0.62	\$40,000	\$675,180	\$715,180
TOTAL	3.06	\$165,000	\$3,332,340	\$3,497,340

Estimated Park and Recreation Facility Impact Fee

Use	Units/Size	Park and Recreation Facility Impact Fee (FY 2017-18)	Total Fee Per Use
Rental Units	500 units	\$3,839/unit	\$1,919,500
Building 1-31 Office	74,000 s.f.	\$3.90/s.f.	\$288,600
Retail	8,000 s.f.	\$2.14/s.f.	\$17,120
Public Gallery	2,000 s.f.	\$0.32/s.f.	\$640
TOTAL FEE			\$2,225,860

It should be noted that the impact fees are not assessed until building permits are issued, and that the fees are increased each year by the Engineering News Record Construction Cost Index for San Francisco, which is typically an increase of about 3% to 4%. Since building permits are not expected to be issued for another year or two, the actual fees are likely to be slightly higher than the figures cited above. However, they will still be well below the actual cost of park and open space construction, which is also likely to increase by approximately the same percentage.

- c. *Describe the project or projects to which the fee credit is requested to apply. The description shall be limited to all or a portion of the project for which specified public facilities are a condition of approval.*

The Park and Recreational Facility fee credit is being requested for the following, each of which is depicted in the attached Land Use Diagram from the City Council-approved PDP plans (see Attachment 2):

- 1) Improvements to the 1.45-acre City-owned Park parcel;
- 2) .62-acre extension of the City-owned park along Sherwin Avenue; and
- 3) .99-acre expansion of the Greenway.

- d. *Document that either: (1) the applicant is required, as a condition of approval for the project, to construct the public facilities; or (2) the applicant requests to build one or more specified public facilities which benefit the project, and the City Council determines by resolution prior to the commencement of construction that it is in the City's best interest for the specified public facilities to be built by the applicant.*

The City Council-approved PDP plan includes and thus requires construction of the three park and open spaces identified above; and construction of these facilities is in the City's best interest as it implements the Strategic Plan and the General Plan. It may be noted that once the facilities are identified within the approved PDP, any development must be consistent with the PDP. The FDP approved by the Planning Commission on December 14, 2017 is consistent with the PDP.

- e. *To the extent that credit for land acquisition costs are requested, document that (1) the location of the land is advantageous to the public facility needs of the City; and (2) the amount of credit for the land acquisition is equal to a reasonable estimate of the fair market value of the land based upon either: (a) the documentation provided by the applicant to the City, or (b) in the event that the City determines that the documentation provided by the applicant does not provide a reasonable basis for determining the fair market value of the land, the applicant shall pay for the costs of a property appraisal by an expert selected by the City which is qualified to express an opinion as to the value of the property (pursuant to California Civil Procedure Code 1255.010).*

The Project does not seek credit for land acquisition costs.

- f. *Notwithstanding the foregoing, no credit shall be provided against impact fees otherwise owed if an applicant has received a development bonus in accordance with Section 9-4.204 of these planning regulations for providing the specified public facility.*

No development bonus was requested nor approved in exchange for design and construction of the park and open spaces identified above.

Timing of Application and Amount of Credit

Planning Code Section 9-5.1912 requires the application for credit to be submitted concurrently with submittal of improvement plans, to the extent the applicant seeks a credit for design or construction. The applicant has met this requirement.

Planning Code Section 9-5.1913 provides that, if the applicant has provided a timely application and it is in the City's interest to allow the applicant to construct the facility, the applicant shall be entitled to credit against fees otherwise owed, provided that the applicant enters into a public improvement agreement. Both the City and the applicant have anticipated that the applicant would construct the facility, and all project approvals are premised on the applicant constructing the facility. Thus, the City has already

determined that it is in the City's interest to allow the applicant to construct the facility, and the remaining issue is the amount of credit due. At a study session on November 21, 2017, when the City Council considered the park design and received information on the request for a park fee credit, some of Council members felt that the park fee credit was appropriate only for the City-owned parcel. However, in accordance with the Planning Regulations, in considering the amount of the credit, the Council should focus on whether the public improvement is consistent with the Willdan Park Impact Study and the Strategic Plan. Whether the public improvement is on City-owned property is not necessarily relevant to the consideration, especially in light of the fact that the Project's conditions of approval (SUBDIV16-002 and FDP-002) require the applicant to dedicate easements to the City, which will allow the Greenway and public park to operate as if they were located on City-owned property. The Project incorporates the expansion of the Emeryville Greenway, including the construction of a public park, as contemplated by both the Willdan Park Impact Study and the Strategic Plan. Thus, staff recommends that credit of the full amount of the Park and Recreation Facility Impact fee be approved.

Assuming the City Council provides the credit, Planning Regulation 9-5.1913 requires the City Council to approve the public improvement agreement, provided certain conditions are met. Of relevance here, the conditions include: the City has approved the design of the facility, the applicant provides improvement security in a form and amount acceptable to the City, the applicant agrees to provide prevailing wage if applicable, the applicant identifies the project to which the credit will be applied, and the credit is applied only to that project.¹ These conditions are satisfied. The Planning Commission has approved the design of the Park, and the Park and Open Space Improvement Agreement ("Improvement Agreement") calls for the City Engineer to approve the final construction drawings. Through the Improvement Agreement, the applicant will be providing bonds. The Improvement Agreement also calls for the applicant to make the determination if prevailing wages are to be paid, and if so, to pay the prevailing wages. Finally, the Improvement Agreement only covers the project that is subject to the credit.

FISCAL IMPACT

As noted above, the cost of the design and construction of the proposed Greenway extension and public park that are included in the City's Strategic Plan is greater than the fees that would be collected through the Park and Recreation Facility Impact fees for the Sherwin Williams Mixed Use Project.

¹ Any land dedicated to the City also must be free from hazardous materials and the applicant must agree to defend, hold harmless and indemnify the City as it relates to any hazardous claims. As it relates to the credit, this condition is not relevant because the applicant is not seeking credit for any land dedication. Nonetheless, the offer of dedication of an easement for the park parcel includes the aforementioned assurance and protection. The offer of dedication for the easement is being offered and accepted as part of recording of the first phase final map. (Planning Regulation §§ 9-6.605; 9-6.606.)

STAFF COMMUNICATION WITH THE PUBLIC

Staff has had communication with the applicant and their legal counsel concerning this fee credit request. There has been no communication about it with the general public.

CONCLUSION

Staff recommends that the City Council adopt the attached resolution granting the request for a credit of the full amount of the Park and Recreation Facility Impact fee that will be levied on the Sherwin Williams Mixed Use project.

PREPARED BY: Miroo Desai, Senior Planner
Andrea Visveshwara, Assistant City Attorney

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Carolyn Lehr, City Manager

Attachments:

1. Applicant's Request Letter
2. Approved Sherwin Williams PDP Land Use Diagram
3. Approved Sherwin Williams Park and Open Space FDP Site Plan
4. Willdan Park Impact Study Project List
5. Parks and Recreation Strategic Plan pages 58-60, "Emeryville Greenway"
6. Draft Resolution
7. Park and Open Space Improvement Agreement