



MEMORANDUM

DATE: November 2, 2021
TO: Christine Daniel, City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: Annual Development Impact Fees Report – Fiscal Year 2020-2021

RECOMMENDATION

Staff recommends that the City Council accept this report as information only. No action is requested of the City Council at this time, as this report is required to be available to the public at least 15 days prior to City Council action. The report will be brought back for City Council consideration of approval at the November 16, 2021, meeting.

BACKGROUND

In 1989, the State Legislature passed the Mitigation Fee Act which added Section 66000 *et seq.* to the California Government Code (the “Mitigation Fee Act”). Among other things, the Mitigation Fee Act requires each local agency that has adopted fees pursuant to the Mitigation Fee Act to make public a report on collected developer fees within 180 days of the close of each fiscal year.¹ The Mitigation Fee Act also requires each local agency to review the report at a public meeting not less than 15 days after the information is made available to the public². The purpose of this item is to comply with this reporting requirement relative to City of Emeryville development impact fees for Fiscal Year 2020-2021. The City of Emeryville has three such fees: (1) Transportation Facility Impact Fee, (2) Park and Recreation Facility Impact Fee, and (3) Affordable Housing Impact Fee. Each is discussed below.

Transportation Facility Impact Fee

Originally called the Traffic Facilities Impact Fee, this impact fee was established by Ordinance No. 90-08, adopted by the City Council on August 7, 1990. This ordinance added Article 3 of Chapter 2 of Title 3 to the Emeryville Municipal Code, entitled “Traffic Facilities Impact Fee Fund”, which established the authority for imposing and charging a Traffic Facilities Impact Fee to be deposited into the Traffic Facilities Impact Fee Fund. The fee itself was established by Resolution No. 90-62, also passed on August 7, 1990, and subsequently amended by Resolution No. 96-75 on May 21, 1996, and Resolution No. 98-167 on October 6, 1998. Resolution 98-167 adopted a “Traffic Mitigation Fee Study”, which established the existence of a reasonable relationship between the need for the public facilities and the impacts of the types of development described in the Fee Study for which the Impact Fee was charged. The Fee Study also established that there was a reasonable relationship between the Traffic Impact Fee’s use and the type of development for which the Traffic Impact Fee was charged.

¹ Government Code Section 66006(b)(1)

² Government Code Section 66006(b)(2)

On July 15, 2014, the City Council adopted Ordinance No. 14-008 adding Article 19 of Chapter 5 of Title 9 to the Emeryville Municipal Code, entitled “Development Impact Fees”, and repealing Article 3 of Chapter 2 of Title 3. 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. Such facilities are divided into “public facility categories”, and each category is to have a separate fee to be deposited into a separate and distinct “fee fund”. Such categories may include, but are not limited to, transportation facilities and park and recreation facilities. The ordinance took effect on August 14, 2014, 30 days after its final passage.

Also on July 15, 2014, the City Council adopted Resolution No. 14-105, establishing an updated and renamed Transportation Facility Impact Fee. By this resolution, the City Council approved and adopted a “Transportation Impact Fee Update” study (“Transportation Impact Fee Nexus Study”) prepared by Fehr and Peers. The Transportation Impact Fee Nexus Study included a revised list of transportation improvement projects to be funded by the fee, based on the General Plan, which calls for a multi-modal transportation system, including public transit, pedestrians, bicycles, and automobiles. This nexus study established the existence of a reasonable relationship between the need for the public facilities and the impacts of the types of development described in the study for which the impact fee is charged, and that there is a reasonable relationship between the fee’s use and the type of development for which the fee is charged. This resolution was effective on September 14, 2014, 60 days after its passage. Projects included in the updated Transportation Facility Impact Fee are indicated in Attachment 1a. Revenues from this fee are deposited into Fund 250, the Transportation Facility Impact Fee Fund.

Park and Recreation Facility Impact Fee

As noted above, on July 15, 2014, the City Council adopted Ordinance No. 14-008 adding Article 19 of Chapter 5 of Title 9 to the Emeryville Municipal Code, entitled “Development Impact Fees”. Park and recreation facilities are among the “public facility categories” authorized by this Article. Also on July 15, 2014, the City Council adopted Resolution No. 14-104, establishing a Park and Recreation Facility Impact Fee. By this resolution, the City Council approved and adopted a “Park and Recreation Facility Development Impact Fee Study” (“Park and Recreation Impact Fee Nexus Study”) prepared by Willdan Financial Services, including a list of parks and recreation projects to be funded by the fee, based on the General Plan and Parks and Recreation Strategic Plan. This nexus study established the existence of a reasonable relationship between the need for the public facilities and the impacts of the types of development described in the study for which the impact fee is charged, and that there is a reasonable relationship between the fee’s use and the type of development for which the fee is charged. This resolution was effective on September 14, 2014, 60 days after its passage. Projects included in the Park and Recreation Facility Impact Fee program are shown in Attachment 1b. Revenue from this fee is deposited into Fund 237, the Park and Recreation Impact Fee Fund.

Affordable Housing Impact Fee

On July 15, 2014, the City Council adopted Ordinance No. 14-009 amending Article 4 of Chapter 5 of Title 9 of the Emeryville Municipal Code, entitled “Affordable Housing Set Aside Program”, and retitling it “Affordable Housing Program”. This Article establishes the authority for the City to impose fees on new rental residential projects and new nonresidential projects to mitigate the projects’ impacts on the need for affordable housing in the city. The ordinance took effect on August 14, 2014, 30 days after its final passage.

Also on July 15, 2014, the City Council adopted Resolution No. 14-103, establishing an Affordable Housing Impact Fee of \$20,000 per dwelling unit on rental residential projects and \$4.00 per square foot on most nonresidential projects. By this resolution, the City Council approved and adopted a “Residential Nexus Study” and a “Non-Residential Jobs-Housing Nexus Study”, both prepared by Keyser Marston Associates. These nexus studies established the existence of a reasonable relationship between the impact fees and the affordable housing impacts attributable to the developments on which the fees are imposed. This resolution was effective on September 14, 2014, 60 days after its passage. On October 20, 2015, the City Council adopted Resolution No. 15-130 increasing the Affordable Housing Impact Fee on rental residential projects to \$28,000 per dwelling unit. This resolution was effective on December 19, 2015, 60 days after its passage. Revenue from this fee is deposited into Fund 239, the Affordable Housing Impact Fee Fund.

DISCUSSION

The three development impact fees are subject to the reporting requirements of the Mitigation Fee Act, as follows:

1. Create separate capital facilities funds or accounts for each improvement funded with impact fees. Remit all interest income earned by the fees to the same fund; interest income must be spent solely on the purpose for which the fee was originally collected. A local agency must not co-mingle fees with any other revenue, except for temporary investment purposes. (California Government Code Section 66006(a))

As noted above, separate funds have been established for each development impact fee as follows: Fund 250, Transportation Facility Impact Fee Fund; Fund 237, Park and Recreation Impact Fee Fund; and Fund 239, Affordable Housing Impact Fee Fund. No funds are co-mingled, and all interest earned by each fund is remitted into its particular account and spent solely on the purpose for which the fee was originally collected. Revenues, expenditures, and fund balances of these three funds are shown in Attachments 2a, 2b, and 2c, respectively. It should be noted that capital improvement projects funded by the development impact fees are also identified in the City’s budget and separate project accounts are established by the Finance Department for each such capital improvement project in order to properly account for its costs and funding sources. A summary

of capital improvement projects funded by the impact fees is included as Attachment 3.

2. Within 180 days after the close of the fiscal year, prepare a public report concerning each impact fee fund. Required contents of the report are as follows (California Government Code Section 66006(b)):

- (a) A brief description of the type of fee in the account.

The Transportation Facility Impact Fee Fund (Fund 250) contains fees imposed on development projects for the purpose of mitigating the impacts that the projects have upon the City's ability to provide transportation facilities. The Park and Recreation Impact Fee Fund (Fund 237) contains fees imposed on development projects for the purpose of mitigating the impacts that the projects have upon the City's ability to provide parks and recreation facilities. The Affordable Housing Impact Fee Fund (Fund 239) contains fees imposed on new rental residential projects and new nonresidential projects to mitigate the projects' impacts on the need for affordable housing in the city.

- (b) The amount of the fee.

The City Council established the following fees for Fiscal Year 2014-15 in relation to the maximum fee, or cap, that can justifiably be imposed on new development, as established by the various nexus studies described above:

- *Transportation Facility Impact Fee: 20% of the cap (cap is \$12,541 per trip)*
- *Park and Recreation Facility Impact Fee: 25% of the cap (cap is \$8,048 per capita for residents and \$4,024 per capita for workers)*
- *Affordable Housing Impact Fee: \$20,000 per dwelling unit (approximately 56% of the cap of \$35,600) for rental residential projects and \$4.00 per square foot for nonresidential projects (approximately 1.6% to 6.0% of the cap, which ranges from \$66.80 to \$244.90 per square foot for various uses.) As noted above, on October 20, 2015, the City Council increased the fee on rental residential projects to \$28,000 per dwelling unit (approximately 79% of the cap).*

The adopting resolutions for each of the three development impact fees, described above, provide that, for any annual period during which the City Council does not otherwise amend the impact fees, the fee amounts shall be adjusted once as of July 1st based on the percentage increase in the Engineering News-Record Construction Cost Index for San Francisco, California. The increase for Fiscal Year 2020-21 was 6.33% and was adopted by City Council Resolution No. 20-35 on April 21, 2020.

The nexus studies established fees for various use types. For ease of reference, the fees have been consolidated into a single table using the standardized use classifications from the Planning Regulations, as shown in Attachment 4. This table indicates each development impact fee for each use type, based on the nexus studies, the percentage of the caps as noted above, and the annual increase, as well as the total of the three development impact fees for each use type.

- (c) The fund's beginning and ending balance for the fiscal year.

As noted in Attachments 2a, 2b, and 2c, the beginning balance on July 1, 2020 and the ending balance on June 30, 2021 for each of the three development impact fee funds were as follows:

	<u>July 1, 2020</u>	<u>June 30, 2021</u>
Transportation Facility (Fund 250)	\$3,024,505	\$1,036,084
Park and Recreation Facility (Fund 237)	\$985,130	\$968,242
Affordable Housing (Fund 239)	\$711,880	\$726,870

- (d) Amount of fees collected, and interest earned and deposited into the fund for the fiscal year.

As noted in Attachments 2a, 2b, and 2c, the fees collected, and interest earned for each of the three development impact fee funds for Fiscal Year 2020-21 were as follows:

	<u>Fees</u>	<u>Interest</u>
Transportation Facility (Fund 250)	\$218,556	\$13,981
Park and Recreation Facility (Fund 237)	\$0	\$4,497
Affordable Housing (Fund 239)	\$10,993	\$3,996

- (e) A description of each expenditure from the fund for that year, including identification of the improvement being funded and the percentage of the cost of the public improvement that was funded with the fee.

Please refer to Attachments 2a, 2b, and 2c detailing fund activities under the heading of "EXPENDITURES". A summary of capital improvement projects funded by the development impact fees, as indicated in the City's budget for Fiscal Years 2019-20 and 2020-21, is included as Attachment 3.

- (f) An identification of the date by which construction of a public improvement will commence if the City determines that sufficient funds have been collected to complete financing on any incomplete project.

A summary of capital improvement projects funded by the development impact fees is included as Attachment 3.

- (g) A description of any interfund transfers or loans.

On May 16, 2017, the City Council approved a loan of \$4,500,000 to the 3706 San Pablo Avenue Affordable Housing Project. Of this amount, \$1,840,000 was from the Affordable Housing Impact Fee Fund (Fund 239), and the remainder came from the Housing Asset Fund (Fund 298). The loan will be repaid each year out of a portion of the surplus cash flow earned by the owner for the previous year after the project is completed and a surplus is determined to exist through an audited annual financial statement. The interest rate is 3% per year.

On June 9, 2020, the City Council adopted Resolution No. 20-46, approving mid-cycle amendments to the Fiscal Year 2019-20 budget. This resulted in a transfer of \$551,507.72 from the General Capital Improvement Fund (Fund 475) into the Park and Recreation Impact Fee Fund (Fund 237) for the Horton Landing Park Expansion project.

- (h) Identification of any fees refunded or allocated for some other purpose.

No fees have been refunded or allocated for some other purpose in Fiscal Year 2020-21.

3. The report is required to be reviewed by the City at a regularly scheduled public meeting not less than 15 days after the report is released to the public (California Government Code Section 66006(b)(2)).

This report is being released to the public no later than October 22, 2021, in connection with the agenda for the November 2, 2021 regular meeting of the City Council and is scheduled for approval by the City Council at its regularly scheduled meeting on November 16, 2021.

4. For the fifth fiscal year following the first deposit into a development impact fee fund, and every five years thereafter, if fees remain unexpended, the local agency must make the findings identifying the purpose to which the fee is to be put, demonstrate that there remains a reasonable relationship between the current need for the fees and the purpose for which it is charged, identify all sources and amounts of funding contemplated to complete financing of incomplete improvements, and designate the approximate dates on which the contemplated funding is expected to be deposited into the fund (California Government Code Section 66001(d)).

The first deposits into the updated Transportation Facility Impact Fee Fund and the new Park and Recreation Facility Impact Fee Fund and Affordable Housing Impact Fee Fund occurred in Fiscal Year 2014-2015. Thus, the fifth fiscal year following these first deposits was Fiscal Year 2019-20, so the findings noted above were made in the report prepared last year for Fiscal Year 2019-20. They

will be required to be made again in the report for Fiscal Year 2024-25, and every five years thereafter.

FISCAL IMPACT

This report is for informational purposes. There is no fiscal impact.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has had no communication with the public regarding this item.

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



Christine Daniel, City Manager

ATTACHMENTS

1. Public Facilities Funded by Development Impact Fees:
 - a. Transportation Facility Impact Fee
 - b. Park and Recreation Facility Impact Fee

2. Revenues, Expenditures, and Fund Balances of Development Impact Fees:
 - a. Fund 250, Transportation Facility Impact Fee Fund
 - b. Fund 237, Park and Recreation Impact Fee Fund
 - c. Fund 239, Affordable Housing Impact Fee Fund

3. Impact Fee Budgets from Fiscal Years 2019-2020 and 2020-2021 City Budget:
 - a. Fund 250, Transportation Facility Impact Fee Fund
 - b. Fund 237, Park and Recreation Impact Fee Fund
 - c. Fund 239, Affordable Housing Impact Fee Fund

4. City of Emeryville Development Impact Fees, Fiscal Year 2020-2021