

AB 602

An Essential Breakdown for Development Impact Fee Programs

What Will We Cover?



1. Speaker Introductions
2. Brief Overview of Development Impact Fee Requirements & Process
3. New AB 602 Requirements
4. Starting/Updating Your Impact Fee Program
 1. Getting Started & What to Anticipate
 2. Practical Tips from the Trenches
5. Q&A

Speaker Introductions



- **Marco A. Martinez** – Partner, Best Best & Krieger, LLP
 - City Attorney - Azusa & Shafter - Special Land Use Attorney - Pomona, Colton, Montclair
 - Assists multiple clients with their development impact fee programs
- **Anita Gutierrez AICP**– Development Director, City of Pomona
 - Over 20 years experience working at the local, state and federal levels of government
 - Led City of Pomona efforts to adopt first impact fee program in 32 years
- **Scott Thorpe** - Senior Vice President, Revenue & Cost Specialists, LLC
 - Public employee for 13 years - Management Consultant for 34 years
 - Conducted 100+ development impact fee studies, most involved multiple updates



Brief Overview of Development Impact Fee Requirements

California Mitigation Fee Act (California Government Code, Sections 66000 – 66025)

Brief Overview: DIF



- **What is a Development Impact Fee (DIF)?**

Fee: “a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, 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, but does not include fees specified in Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements ... or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law” (Gov’t Code § 66000, subd. (b).)

Public Facility: “...public improvements, public services and community amenities.” (Gov’t Code § 66000, subd. (c).)

Brief Overview: DIF



In a nutshell, Development Impact Fees are fees imposed on specific development projects to defray the cost of new or additional public facilities that are needed to serve those developments.

Common types of impact fees include traffic facility mitigation fees, public safety facilities fees, park facility fees, sewer facility fees, library facility fees, among others.





Starting/Updating Your Development Impact Fee Program

Getting Started & What to Anticipate

Starting/Updating Your Development Impact Fee Program



The Nexus Study: Provides a quantified basis for support of the DIF:

1. Provides legal support for findings; and
2. Quantifies existing deficiencies, projected burdens

- Baseline Information for Nexus Study:
- General Plan
 - Capital Improvement Plans
 - Specialized Master Plans (Park, Sewer, etc.)
 - Census & Nexus Data from National Organizations



Starting/Updating Your Development Impact Fee Program



- **Starting Your Nexus Study/DIF Program:**

- Initial Discussions - Clarify expectations
- Land Use Database Information
 - Detailed inventory of development, expectations for land uses
- Desk Inventory of Existing Assets
 - Determine existing levels of service (LOS) (good, bad or otherwise)
 - Determine expected increases in infrastructure demand from new development
 - Identify projects to meet demand (increase capacity) - exclude replacements projects (cannot impose fees to address existing deficiencies in capacity)
- Nexus Study components
 - Facts, justification, fee estimates

Starting/Updating Your Development Impact Fee Program



- **Consider Issues:**

- Update Land Use Database (or not)
- How to handle completed projects
- Positive or negative fund balances
- Handling existing developer fee credits
- Use of inflation factors (CPI, ENR – Construction/Building Index)



Starting/Updating Your Development Impact Fee Program



The Adoption Requirements:

- Ordinance or Resolution? Typically, the Ordinance describes the administrative regulations needed to administer the fee program. The fees are typically adopted by Resolution.
- Public Hearing. Adoption of the fees requires at least one regularly scheduled public hearing, with notice given pursuant to Government Code § 6062a.
- Notice. Section 6062a, requires publication of notice twice, at least five days apart, with the first ten days prior to the hearing.
- Effective Date. 60 days after adoption.



Starting/Updating Your Development Impact Fee Program



• The DIF Findings:

- “In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:
 - (1) Identify the **purpose** of the fee.
 - (2) Identify the **use** to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged.
 - (3) Determine how there is a **reasonable relationship** between the fee’s **use and the type of development project** on which the fee is imposed.
 - (4) Determine how there is a **reasonable relationship** between the **need for the public facility and the type of development** project on which the fee is imposed.
- (b) In any action imposing a fee as a condition of approval of a development project by a local agency, the local agency shall determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. (Imposed on Ad Hoc basis)

Starting/Updating Your Development Impact Fee Program



The Accounting Requirements (GC 66006):

- Fees must be deposited in separate account or fund.
- Cities must adopt annual reports within 180 days of the close of each fiscal year.
- Once sufficient funds are collected to fund improvement, cities have 180 days to identify the approximate date of construction or refund.



Starting/Updating Your Development Impact Fee Program



The 5-Year Reporting Requirements (GC 66001(d)(1)):

- A. 5th fiscal year following deposit, and every 5 years, must make 66001(a) findings.
- B. Findings must be made in connection with annual report.
- C. Failure to make findings results in refund requirement.





Brief Overview of AB 602 (Grayson) Requirements

Signed by Governor Newsome on September 28, 2021



Brief Overview of AB 602

- One of Several Housing Crisis Bills
- 3 Components to AB 602

- Permit Streamling Act Changes
- Direction to HCD
- Mitigation Fee Act Changes



Brief Overview of AB 602



- Permit Streamling Act Changes:
 - Requires city to post written fee schedule (or a link) on internet website.
 - Requires a city to request from a development proponent, upon issuance of a certificate of occupancy or the final inspection, the total amount of fees and exactions associated with the project and post this information on its website.
 - Now includes park or in-lieu fees imposed pursuant to the Quimby Act in the definition of “Exaction.”
- Direction to California Department of Housing & Community Development (HCD):
 - Requires HCD to develop a model nexus study by January 1, 2024. The model will include a method for calculating the feasibility of building housing on a site given the proposed impact fees.

Brief Overview of AB 602



- AB 602 Changes to Mitigation Fee Act: Nexus Studies
 - Requires adoption of a Nexus Study prior to the adoption of fees.
 - Requires Nexus Study to identify the existing level of service for each public facility, identify new levels of service and include an explanation of why the new levels of service are more appropriate.
 - Requires information to support required findings for adoption of impact fees.
 - If fees will be increased, Nexus Study is required to review assumptions supporting the original fee and evaluate the amounts already collected.

Brief Overview of AB 602



- AB 602 Changes to Mitigation Fee Act: Housing Impact Fees (Effective July 1, 2022)
 - Nexus studies shall calculate a fee imposed on a housing development project proportionately to the square footage of the proposed units of the development. A local agency that imposes a fee proportionately to the square footage of the proposed units of the development shall be deemed to have used a valid method to establish a reasonable relationship between the fee charged and the burden posed by the development.
 - Exception: Adopt with findings that (1) explain why square footage is not an appropriate metric; (2) explain that the alternative basis for adopting the fee bears a reasonable relationship to the fee charged and the burden imposed on development; and (3) explain why other policies ensure that smaller developments are not charged disproportionate fees.

Brief Overview of AB 602



- AB 602 Changes to Mitigation Fee Act: Other Requirements
 - Requires large jurisdictions to adopt a Capital Improvement Plan as part of a Nexus Study.
 - “Large jurisdictions” - a City/County with population over 250,000.
 - Nexus Study shall be adopted at a public hearing with minimum 30-day hearing notice.
 - Must notify any person requesting notice of intent to begin a Nexus Study of the date of the public hearing.
 - Nexus Studies must be updated every 8 years.
 - Public may submit information/evidence showing findings are insufficient or that agency failed to comply with the law. Agency must consider the information submitted.



Starting/Updating Your Development Impact Fee Program

Local Perspective & Tips from Inside the Trenches

Starting/Updating Your Development Impact Fee Program



LOCAL PERSPECTIVE – TIPS FROM INSIDE THE TRENCHES

- Understand what fees you have - Pomona had 4 impact fees that had not been increased in 32 years.
- Decide which fees are most important to the City and what fees are possible.
- Combine a nexus analysis with a market feasibility analysis to understand what the market can support without negatively impacting development.
- Reach out proactively to the Building Industry Association and share information. Early conversations can lead to less opposition and possible support.
- Public workshops/study sessions

Table 1: Fee Scenarios

| Development Impact Fees (DIF) | Current Fees Per Resolution 89-200 | Maximum Fee Per Willdan Study |
|-------------------------------------|------------------------------------|-------------------------------|
| Roadways and Highway Fees | \$50 | \$6,807 |
| Traffic Signal and Control Device | \$50 | \$592 |
| Public Safety Improvement Fee | \$350 | \$3,972 |
| Park and Recreation Improvement Fee | \$675 | \$8,473 |
| Total 4DIF Fees | \$1,125 | \$19,844 |

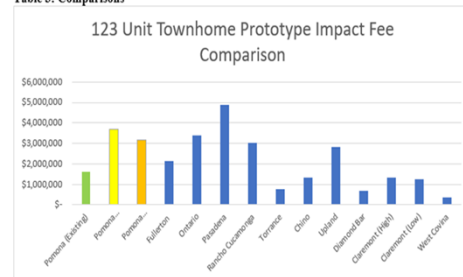
Starting/Updating Your Development Impact Fee Program



LOCAL PERSPECTIVE – TIPS FROM INSIDE THE TRENCHES

- Comparisons. Can be difficult due to differences in fees & fee structures.
- Timing is important. Other policy decisions with financial implications & market conditions affect how much fees should be increased
- Incentives. Offer relief for affordable housing production (fee deferrals, waivers)
- Financing Options. Help to finance increased costs (i.e. Statewide Community Infrastructure Program)

Table 3: Comparisons



Starting/Updating Your Development Impact Fee Program



LOCAL PERSPECTIVE – TIPS FROM INSIDE THE TRENCHES

- Keep impact fees in separate account - each must be used for a specific purpose.
- Provide training for both finance staff and implementing department staff on what/ how funds can be used.
- Funds must be put in a Capitol Improvement Program fund or spent within 5 years or the City could have to give funds back.

Use It or Lose It: San Clemente Required to Refund \$10 Million in Unused Impact Fees

Walker v. City of San Clemente (August 28, 2015, G050552)

Starting/Updating Your Development Impact Fee Program



- Prepare for the rush to the counter - Consider adoption of Interim Fee Resolution to give notice- establish maximum amount of fees
- Consider option of allowing decision makers to adopt lower fees and raise gradually
- Publication to development community



Starting/Updating Your Development Impact Fee Program



- Summary of Transparency/Posting Requirements:
 - Current schedule of fees, exactions, & affordability requirements.
 - All zoning ordinances, development standards.
 - List of all requirements for a development project.
 - Current & previous 5 annual nexus studies; water & sewer connection fees.
 - Archive of impact fee nexus studies and cost of service studies performed since January 1, 2018.
 - Update website within 30 days of any change to the information.
 - Upon issuance of certificate of occupancy or final inspection of a new housing unit, must also request from the developer the total amount of impact fees levied and post information on website.
 - Must update twice a year; may state that not responsible for accuracy of information provided.





Questions?

Thank You!

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