



CITY COUNCIL AGENDA STATEMENT



October 1, 2019

File ID: 19-0456

TITLE

- A. REPORT AND REQUEST FOR CITY COUNCIL DIRECTION REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS
- B. ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTIONS 19.58.022 (ACCESSORY DWELLING UNITS) AND 19.58.023 (JUNIOR ACCESSORY DWELLING UNITS) TO REMOVE THE OWNER OCCUPANCY REQUIREMENT (FIRST READING)

RECOMMENDED ACTION

Council provide direction as it deems appropriate and place the ordinance on first reading.

SUMMARY

In January 2017, the State of California enacted several laws designed to reduce barriers to the development of affordable housing, specifically, Accessory Dwelling Units (ADUs). In response to these legislative actions, the City Council approved ordinances amending various chapters of the Chula Vista Municipal Code (CVMC) relating to the development of ADUs and Junior ADUs (JADUs). The City Council has requested a report regarding ADU fees and related issues.

ENVIRONMENTAL REVIEW

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Notwithstanding the foregoing, it has also been determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

At the March 12, 2019 City Council meeting, the Council approved a referral directing staff to examine building fees for ADUs.

ADUs and JADUs are alternative housing models, commonly known as secondary units, in-law units, granny flats, or backyard cottages. ADUs provide complete independent living facilities for one or more persons and may be attached to an existing single-family residence or detached. In contrast, JADUs are contained within an existing single-family structure, and may share sanitation facilities with the existing structure. For both ADUs and JADUs, the City requires the property owner to reside in either the existing single-family structure or the accessory unit.

The following describes ADU regulations currently in effect and the various fees that are assessed by the City of Chula Vista on ADUs and JADUs, as compared with other local jurisdictions. A number of possible modifications to regulations and associated programs are also described, for Council's consideration.

Existing ADU Regulations

In order to reduce barriers and create opportunities for residential property owners to build accessory dwelling units as affordable housing stock, the State of California enacted Senate Bill 1069, Senate Bill 2406, and Assembly Bill 2299, effective January 2017. In January 2018, additional bills were enacted (Senate Bill 229 and Assembly Bill 494). Each bill is discussed in further detail below.

Senate Bill 1069 amended the California Government Code to include the finding that ADUs offer lower cost housing to meet the needs of existing and future residents, and that they represent an essential component of California's housing supply. It further stated that it was the intent of the State Legislature that the provisions of a local agency ADU ordinance not be so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create ADUs in authorized zones. Senate Bill 1069 modified existing Planning and Zoning Law to include the following provisions:

- Replaced the term "second unit" with "accessory dwelling unit";
- Prohibited the imposition of parking standards for ADUs under specified circumstances;
- Required ministerial approval to create existing space within a single-family dwelling or accessory structure for ADUs;
- Prohibited local agencies from requiring the installation of a new or separate utility connection between the ADU and the utility, or requiring a connection or capacity fee; and
- Established various development standards.

Assembly Bill 2299 established State law authorizing local jurisdictions to create an ordinance with similar provisions to those included in Senate Bill 1069, with an added provision to reduce or eliminate parking requirements.

Senate Bill 2406 established State law for the provision of JADUs within existing single-family residences. Key provisions include:

- Prohibited parking requirements;
- Limited the number of JADUs to one per single-family residential zoned lot with an existing single-family residence;
- Allowed for owner-occupancy requirements, unless the owner is another governmental agency, land trust, or housing organization; and
- Established various development standards.

Enacted in January 2018, Senate Bill 229 refined provisions previously established with Senate Bill 2069 and Assembly Bill 2299 by allowing ADUs in zones that allow a single-family or multifamily use with a proposed or existing single-family dwelling. Assembly Bill 494 also refined the previous bills and is similar to Senate Bill 229, but added flexible setback requirements for existing garages, limited parking requirements to a maximum of one space per ADU or bedroom, whichever is less, and further defined the accessory structures that could include an accessory unit.

In response to the actions of the State, the City Council adopted Ordinance 3423 in April 2018 amending various chapters of the CVMC relating to the development of ADUs and JADUs and Ordinance 3424 waiving certain fees. Ordinance 3423 made the following key changes to CVMC Chapter 19 (Planning and Zoning) to comply with State law:

- Changed nomenclature from Accessory Second Dwelling Unit to Accessory Dwelling Unit;
- Allowed ADUs on single-family and multifamily zoned lots developed with a proposed or an existing single-family dwelling;
- Eliminated the minimum lot size requirement;
- Permitted a maximum ADU unit size of 1,200 square feet; not to exceed 50% of the primary dwelling, whichever is less;
- Eliminated the garage replacement requirement, when the garage for a primary dwelling is converted to an ADU;
- Allowed replacement parking in any configuration, including tandem parking;
- Eliminated parking requirements for ADUs located within ½ mile of public transit;
- Allowed existing detached garages in the rear yard to be converted to an ADU, and maintained the existing setback;
- Required ADUs above a detached garage to maintain a minimum five-foot rear and side yard setback from property lines;
- Permitted attached ADUs, subject to the same development standards as the primary dwelling;
- Allowed for ADUs to be subject to design standards;
- Allowed local agencies to require owner-occupancy; and
- Allowed JADUs to be located within the existing dwelling (i.e. converted bedroom), not exceeding 500 square feet, with no parking requirement.

Ordinance 3424 amended CVMC Chapter 3.32 (Residential Construction Tax) to exempt ADUs and JADUs from the City's Residential Construction Tax (RCT) and amended CVMC Chapter 17.10 (Parklands and Public Facilities) to waive the assessment of Parkland Acquisition and Development (PAD) Fee for ADUs and JADUs. Assuming a one-bedroom ADU in western Chula Vista, classified as multifamily, adoption of Ordinance 3424 reduced the fees due for that unit by nearly \$10,000 (\$250 reduction in RCT and \$9,566 in PAD fees waived).

In November 2018, the Council took further action to reduce the fees applicable to ADUs by adopting Ordinance 3448. This ordinance removed the requirement in CVMC Section 19.58.022(C)(9) to install separate water and sewer connections for new detached ADUs. By removing this requirement, the City removed the need to charge water and sewer connection fees for ADUs (\$3,892 reduction in Sewer Capacity Fee).

ADU and JADU Fees

The cost to permit an ADU or JADU varies based on the type of unit and the complexity of the existing single-family structure. The City collects intake and plan check fees upon permit application. Inspection fees are collected upon permit issuance, and development impact fees may be paid anytime between permit issuance and final inspection.

Intake, Plan Check, & Inspection Fees

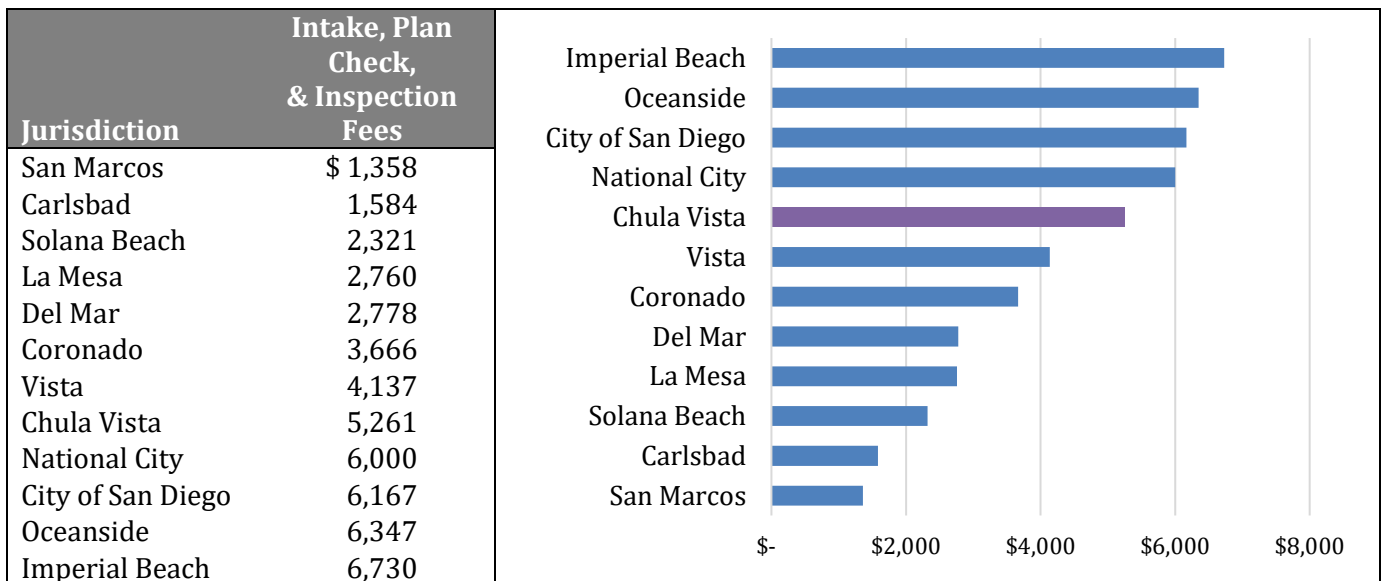
Intake, plan check, and inspection fees charged by the City for a typical detached 500 square foot ADU are as follows:

Table 1 – Typical ADU Intake, Plan Check, and Inspection Fees

Description	Amount
Intake Fee	\$ 546.01
Building Plan Check Fee	\$ 1,474.21
Fire Prevention Plan Check Fee	\$ 298.98
Building Inspection Fee	\$ 2,941.66
Total	\$ 5,260.86

Fees for a similar ADU structure from neighboring jurisdictions are provided below:

Table 2 – Fee Comparison



Development Impact Fees, In-Lieu Fees, Capacity Fees, and Taxes

In addition to the above permit fees, the City also assesses development impact fees (DIFs) on all new residential and non-residential development, including ADUs and JADUs. DIFs are exactions charged by local agencies in order to defray all or a portion of the cost of new public facilities required to serve new development. DIFs fund only capital projects and purchases; they cannot be used to fund ongoing maintenance or operations of facilities.

Adopted by ordinance of the City Council, the legal structure for the City’s DIF program is based on Section 66000 of the California Government Code (the “Mitigation Fee Act”) and relevant case law. This legal framework requires that DIFs charged by the City bear a reasonable and roughly proportional relationship to the development project impacts being mitigated. Each of the City’s DIF programs relies upon a nexus study that identifies the impacts attributable to new development, the capital program necessary to mitigate those impacts, and then apportions the costs of that capital program to new development.

DIFs are approved by ordinance of the City Council, with the Public Facilities Development Impact Fee (PFDIF) codified in CVMC Chapter 3.50 (*Development Impact Fees to Pay for Various Public Facilities*) and the Eastern, Western, and Bayfront Transportation Development Impact Fees (TDIFs) codified in CVMC Chapter 3.54 (*Transportation Development Impact Fees*). The Traffic Signal Fee is assessed citywide on all new development (residential and non-residential) and is authorized by City Council Policy 478-01 (*Participation by Private Developers in the Financing and/or Installation of Traffic Signals*). Additional DIFs may be assessed for trunk sewer and pedestrian bridge construction purposes, depending on the geographic location of the unit.

In addition to DIFs, new development in the City is also charged Parkland Acquisition and Development (PAD) In-Lieu Fees, Sewer Capacity Fees, and a Residential Construction Tax. Each of these charges is authorized by California law. The PAD fee relies upon the legal authority granted to local agencies in Section 66477 of the California Government Code (the “Quimby Act”) and is assessed on all new residential development in the City (single-family, multifamily, and mobile home). The City’s PAD ordinance is codified in CVMC Chapter 17.10 (*Parklands and Public Facilities*). The Sewer Capacity fee is authorized by Section 5474 of the California Health and Safety Code and is collected from any owner or person making an application to develop any residential commercial, industrial or other property in the City. The City’s Sewer Capacity Fee ordinance is codified in CVMC Chapter 13.14 (*Sewers – Fees*). The Residential Construction Tax is imposed pursuant to the taxing power of the City and is codified in CVMC Chapter 3.32 (*Residential Construction Tax*). As previously described, the City Council has acted to waive and/or exempt ADUs and JADUs from the payment of these specific fees.

The following assumptions are applied when assessing impact fees on ADUs and JADUs:

- The PFDIF is assessed using the multifamily rate;
- Transportation DIFs are assessed using the medium-density residential rate;
- The Traffic Signal fee is assessed using the medium-density residential rate;
- Pedestrian Bridge DIFs are assessed using the multifamily residential rate.

In addition to assessing DIFs for the new ADU/JADU using the multifamily (or equivalent) rate, we also assume a reduced impact for the residents of the existing structure. In effect, we view the entire parcel as a medium-density multifamily residential project for impact fee purposes when an ADU or JADU is added. A DIF credit is calculated by comparing the reduced fees that would have been due for a medium-density multifamily unit with the fees that would be collected from a new low-density single-family unit. This credit is then applied to the fees calculated for the ADU/JADU. As a result, new ADUs/JADUs pay less than would otherwise be due for a traditional multifamily unit.

The following table summarizes the DIFs, in-lieu fees, capacity fees, and taxes currently assessed on ADUs/JADUs, including the application of credit for the existing use. A comparison with the current fee

applicable to new single-family dwelling unit (DU) construction is also provided for reference. New rates effective October 1, 2019 are provided.

Table 3 – Current ADU/JADU Impact Fees

West of I-805				
Fee Item	Adopted Fee per Single-Family DU	Existing Unit Credit	ADU/JADU Fee	Net ADU/JADU Fees Due
Public Facilities DIF	\$ 11,175	\$ (760)	\$ 10,569	\$ 9,809
Western Transportation DIF	4,474	(895)	3,579	2,684
Traffic Signal Fee	406	(81)	324	243
Sewer Capacity Fee	3,892	-	-	-
Parkland Acquisition & Development Fee	13,013	-	-	-
Residential Construction Tax	450	-	-	-
Total Impact Fees and Taxes	\$ 33,410	\$ (1,736)	\$ 14,472	\$ 12,736

East of I-805				
Fee Item	Adopted Fee per Single-Family DU	Existing Unit Credit	ADU/JADU Fee	Net ADU/JADU Fees Due
Public Facilities DIF	\$ 11,175	\$ (760)	\$ 10,569	\$ 9,809
Eastern Transportation DIF	14,705	(2,941)	11,764	8,823
Traffic Signal Fee	406	(81)	324	243
Sewer Capacity Fee	3,892	-	-	-
Parkland Acquisition & Development Fee	20,695	-	-	-
Residential Construction Tax	450	-	-	-
Total Impact Fees and Taxes	\$ 51,323	\$ (3,782)	\$ 22,657	\$ 18,875

Neighboring jurisdictions have taken a number of actions related to development impact fees assessed on ADUs. As of the drafting of this report, the following programs are in place:

- Vista waives development impact fees for ADUs that qualify as affordable housing units;
- Escondido waived development impact fees for all ADUs;
- Poway reduced development impact fees by 50%;
- City of San Diego waived all development impact fees (and other similar fees);
- Santee has waived all development impact fees and permit fees (plan check and inspections) for a five-year trial; and
- San Diego County has waived all development impact fees and permit fees (plan check and inspections) for a five-year trial.

Payment Plans

The City currently offers payment plans for ADUs/JADUs, with the following standard terms:

- Maximum repayment period of twenty-four (24) months;
- Minimum DIF deferral amount of \$1,000;
- Deferral of \$10,000 or less may be secured with a Promissory Note;
- Deferrals in excess of \$10,000 require a Promissory Note and recordation of a Lien and Development Impact Fee Payment Plan Agreement on the property as security;
- Simple interest of three percent (3%) per annum is assessed;
- The first payment must be made concurrent with the execution of the Promissory Note;
- Payments are due no later than then 15th of each month; and
- Payment received after the 15th of each month are assessed interest of seven percent (7%) per annum on the unpaid balance.

To date, the City has entered into 6 ADU/JADU DIF payment plans, for a total of \$49,000. The average amount deferred is \$8,170. Payment plans are not available for intake, plan check, and inspection fees.

Recommended Actions

In response to the Council’s referral to staff and input from the applicants, staff recommends a number of actions to further reduce barriers to development of ADUs/JADUs, as described below.

Owner-Occupancy Requirement

Staff recommends eliminating the owner-occupancy requirement for ADUs and JADUs. Adoption of the proposed ordinance makes this modification to CVMC Sections 19.58.022 (ADUs) and 19.58.023 (JADUs). Further, staff recommends that all owner-occupancy deed restrictions that have been required by the City as part of the ADU/JADU development process to date be released at no cost to the property owners.

Impact Fee “Waivers”

Due to the legal framework under which DIFs are established, it is not possible to waive DIF fees in the traditional sense. To do so would result in other fee payers subsidizing the development of ADUs/JADUs, a violation of the Mitigation Fee Act. In order to not charge a DIF fee that is due (“waive” the fee), an alternative funding mechanism to pay the fees that would otherwise have been collected must be identified.

Staff recommends the creation of a process to pay DIFs due for ADUs/JADUs, if certain affordability requirements are met (hereinafter referred to as “waiving”). Staff recommends “waiving” DIFs for ADUs/JADUs if the applicant records an affordable housing deed restriction on their property. Staff proposes the following deed restriction requirements:

Table 4 – Proposed Affordability Deed Restrictions

Income Category	Affordability Term
Very Low-Income at 30% to 50% of local area median income (AMI)	10 years
Low-Income at 50% to 80% of AMI	15 years
Moderate-income at 80% to 120% of AMI	20 years

In addition, staff recommends offering DIF “waivers” to property owners that are constructing ADUs/JADUs to be occupied by family members, with the recordation of a deed restriction to require such occupancy.

If the Council directs staff to develop such a program, staff will return with a comprehensive approach, including alternative funding sources for payment of DIFs and a monitoring program to ensure compliance with the required deed restrictions for the Council's consideration. Staff recommends that any such "waiver" program be applied retroactively and offered to owners that submitted their applications January 1, 2018 or later.

Impact Fee Financing

As previously described, the City currently offers a short-term payment plan program for ADU/JADU DIFs (limited to a 24-month repayment term). Based upon feedback from applicants, staff identified the need for a more robust payment plan program. Staff recommends the creation of a new community facilities district (CFD) citywide for this purpose. Similar to CFD 17-I, the Western Chula Vista CFD, the proposed CFD would allow for individual properties to annex into the district. Upon annexation, the property would be able to finance most impact fees due via their annual ad-valorem property tax bill. For the Western TDIF, only the portion that is not required to be collected pursuant to the SANDAG TransNet Ordinance RTCIP could be financed through this CFD. The TransNet ordinance requires the collection of the RTCIP amount, currently \$2,533.15 of the total fee of \$3,579 per medium-density residential unit. Staff recommends the creation of such a CFD, with the following provisions:

- Open to all infill residential development (single-family dwellings and ADUs/JADUs);
- Maximum repayment term of 20 years;
- If the property will be offered for rent, eligible DIFs would be deferred for 10 years from final inspection, with payment due in years 11 through 20. Should the property subsequently be offered for short-term rental (Airbnb, VRBO, etc.), payments would be accelerated to begin the next tax year.
- If the property is offered for sale, payment would be due in years 1 through 20 (no deferral period); and

If Council directs staff to develop such a program, staff will assemble a CFD formation team and return to Council with a request to initiate formation proceedings, including identifying funding to finance the formation effort.

Pending Legislation

As of the drafting of this report, additional ADU related state legislation is pending, including Senate Bill 13 and Assembly Bills 68 and 881. Both Assembly bills failed to pass the Assembly by September 13, the final day for bill passage in 2019. Senate Bill 13 was approved by both the Assembly and the Senate on September 13 and is being delivered to the governor for final action no later than September 30, 2019. Senate Bill 13 includes the following key provisions (not an exhaustive list):

- Allows ADUs/JADUs to be either attached to, or located within, an attached garage, storage area, or other structure;
- Prohibits replacement parking requirements when a garage, carport, or covered parking structure is demolished to construct an ADU or converted into an ADU;
- Amends the existing prohibition on parking standards for ADUs located within ½ mile of public transit to apply to units located within ½ mile walking distance of public transit;

- Prohibits local agencies from establishing a minimum square footage requirement for ADUs/JADUs that prohibits an efficiency unit;
- Prohibits local agencies from establishing a maximum square footage requirement of less than 850 square feet, or 1,000 square feet if the ADU/JADU contains more than one bedroom;
- Prohibits local agencies from establishing any other minimum or maximum size requirements that would prohibit at least an 800 square foot ADU/JADU, that is at least 16 feet in height with 4-foot side and rear yard setbacks.
- Prohibits local agencies from requiring fire sprinklers if they are not required for the primary residence;
- Prohibits local agencies from imposing owner occupancy requirements until January 1, 2025;
- Reduces the time for local agencies to consider and approve an application for an ADU/JADU, ministerially and without discretionary review, from 120 days to 60 days from receiving a completed application;
- Removes the existing requirement to determine development impact fees in accordance with the Mitigation Fee Act;
- Prohibits local agencies from imposing any development impact fees on ADUs less than 750 square feet in size;
- Limits the development impact fees that can be charged on ADU's 750 square feet or larger to be proportional to the fees that would otherwise be charged for a new single-family dwelling on the same lot, on a square footage basis;
- Revises the basis for calculating connection fees and capacity charges for ADUs;
- Authorizes the Department of Housing and Community Development to submit written findings to each local agency as to compliance of the local ordinance with State law, possibly culminating in referrals to the Attorney General of local agencies in violation of State law;
- Allows local agencies to count ADUs in identifying adequate sites for housing in General Plan Housing Elements;
- Authorizes owners of ADUs built before January 1, 2020 (or built on or after January 1, 2020, under specified circumstances) that receive a notice to correct violations or abate nuisance to request that enforcement action be delayed for five (5) years, if correcting the violation is not necessary to protect health and safety, as determined by the enforcement agency;

Should Senate Bill 13 be signed into law by the Governor, the City would no longer be required under the Mitigation Fee Act to assess impact fees on all ADUs/JADUs. For those units smaller than 750 square feet (SF), no impact fees could be assessed. For units 750 SF or larger, the maximum impact fees to be charged would be calculated on a square footage basis, proportional to the impact fees that would be charged for the primary structure on the lot. The effect of this limit would vary depending on the size of the primary structure and the size of the ADU, as illustrated in the table below.

Table 5 – Effect of Impact Fee Cap

	West of I-805	East of I-805
Single-Family DU Fees	\$ 33,410	\$ 51,323
Single-Family DU SF	2,500	2,500
Fee per SF (Cap)	\$ 13.36	\$ 20.53
<i>Scenario 1 - 1,000 SF ADU</i>		
ADU SF	1,000	1,000
ADU Impact Fee Cap	\$ 13,364	\$ 20,529
City Calculated ADU Fees	\$ 12,736	\$ 18,875
Fees Due	\$ 12,736	\$ 18,875
<i>Scenario 2 - 800 SF ADU</i>		
ADU SF	800	800
ADU Impact Fee Cap	\$ 10,691	\$ 16,423
City Calculated ADU Fees	\$ 12,736	\$ 18,875
Fees Due	\$ 10,691	\$ 16,423

Should Senate Bill 13 be signed into law, staff recommends that the City Council proceed with placing the ordinance as drafted on first reading and direct staff to return with an ordinance implementing the provisions of Senate Bill 13. If the Governor does not sign the bill, staff recommends that the City Council proceed with placing the ordinance as drafted on first reading and direct staff to implement the proposed impact fee “waivers” and impact fee financing. Staff will report out on the status of this bill at the Council meeting.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the real property holdings of the City Council members do not create a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

Approving an ordinance removing the owner-occupancy requirement for ADUs and JADUs has limited fiscal impacts. As proposed, the General Fund will incur the cost of releasing all associated deed restrictions recorded to date. No fund appropriations for this purpose are requested.

Receiving a report and providing direction has no impact in the current fiscal year. All fiscal impacts associated with proposed impact fee “waiver” and financing programs or the implementation of Senate Bill 13 would be reported to the Council as the individual programs are brought back for further discussion and approval.

ONGOING FISCAL IMPACT

There is no ongoing fiscal impact as a result of this action. All fiscal impacts associated with the proposed impact fee “waiver” and financing programs or implementation of Senate Bill 13 would be reported to the Council as the individual programs are brought back for further discussion and approval.

ATTACHMENTS

None.

Staff Contact: Tiffany Allen, Development Services Department