



# CITY COUNCIL AGENDA STATEMENT



October 2, 2018

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18-0462

## **TITLE**

ORDINANCE OF THE CITY OF CHULA VISTA CONSOLIDATING THE EASTERN TRANSPORTATION DEVELOPMENT IMPACT FEE, WESTERN TRANSPORTATION DEVELOPMENT IMPACT FEE, AND BAYFRONT DEVELOPMENT IMPACT FEE CHAPTERS OF THE CHULA VISTA MUNICIPAL CODE BY REPEALING AND REPLACING CHAPTER 3.54 (TRANSPORTATION DEVELOPMENT IMPACT FEE) AND REPEALING CHAPTER 3.55 (WESTERN AND BAYFRONT TRANSPORTATION DEVELOPMENT IMPACT FEES) (FIRST READING)

## **RECOMMENDED ACTION**

Council conduct the public hearing and place the ordinance on first reading.

## **SUMMARY**

The City of Chula Vista assesses three geographically based transportation development impact fees (TDIFs): an Eastern Transportation Development Impact Fee (ETDIF), a Western Transportation Development Impact Fee (WTDIF) and a Bayfront Development Impact Fee (BFDIF) (see Attachment 1 for the location of the three TDIF areas). The ETDIF is codified in Chapter 3.54 of the Chula Vista Municipal Code (CVMC), while the WTDIF and BFDIF are codified in Chapter 3.55. Consolidation of all three transportation DIFs into a single chapter of the CVMC is recommended in order to ensure consistency between programs and to simplify ordinance administration. The proposed consolidated ordinance also reflects minor modifications to improve readability; clarify application and administration of the fee programs; and updated fee waiver, reduction, and deferral provisions. No change to the ETDIF, WTDIF, or BFDIF fee is recommended in conjunction with this action.

## **ENVIRONMENTAL REVIEW**

The City's Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA.

## **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

Not applicable.

## DISCUSSION

The ETDIF was originally adopted by the City Council in January of 1988, via Ordinance 2251. The ETDIF was established as a mechanism for new development within the eastern area of the City (generally located east of I-805) to mitigate project impacts on transportation facilities. Since its inception in 1988, the ETDIF program has been updated several times to reflect new land use approvals, changes to the City's General Plan, updated cost estimates, and updated administrative regulations. The ETDIF was last updated in 2014, and the current version of the ordinance is codified in Chapter 3.54 of the CVMC (see Attachment 2).

In March of 2008, the City Council adopted Ordinance 3106, establishing a WTDIF and creating Chapter 3.55 of the CVMC. At that time, the WTDIF generally applied to all development occurring west of the I-805. The WTDIF was amended in 2014 via Ordinance 3327 to reduce the applicability of the WTDIF to only those areas generally located between I-5 and I-805 and to create a separate BFDIF applicable to the Chula Vista Bayfront Master Plan Area (generally those areas west of I-5). Both the WTDIF and the BFDIF are codified in Chapter 3.55 of the CVMC (see Attachment 3).

Consolidation of the three existing transportation TDIFs into a single chapter of the CVMC is recommended to ensure consistency between the three TDIF programs (when appropriate) and to simplify ordinance administration. In order to consolidate the TDIFs into a single chapter of the CVMC, the repeal and replacement of Chapter 3.54 is recommended, along with the repeal of Chapter 3.55. This action does not increase the ETDIF, WTDIF, or BFDIF fee. The proposed replacement Chapter 3.54 is provided as Attachment 4 to this report.

While the majority of the changes proposed to Chapter 3.54 result from the consolidation of the three transportation TDIF programs, additional updates are also recommended to clarify applicability of the ordinance, streamline administration, and improve readability. In preparing the proposed replacement Chapter 3.54, staff reviewed all other City development impact fee (DIF) ordinances, as codified, as well as published ordinances of other jurisdictions to determine DIF ordinance best practices. A number of updates are recommended based upon this review. For example, Chapters 3.54 and 3.55 currently include a list of all eligible transportation facilities for each program from inception. This information is not required in the ordinances and can instead be incorporated via reference to the applicable nexus studies or other published documents. As a result, the elimination of the transportation facility list from Chapter 3.54 is recommended.

Similarly, both chapters currently list calculated fees for certain potential land uses. This is not a comprehensive list, and the land uses assumed are not consistent between the two chapters. For all three fee programs, fees per Equivalent Dwelling Unit (EDU) and average daily trip (ADT) drive the ultimate fee calculation in each nexus study (1 EDU = 10 ADTs). In order to simplify and clarify applicability of the ordinance, removal of the fees by land use from the CVMC is recommended. Instead, the new CVMC Chapter 3.54 will list only the fee per ADT for each TDIF program and explicitly allow for the determination of project fees using published traffic generation rates, traffic generation studies, traffic count data, traffic impact studies, other relevant data and analysis, and/or engineering judgement (see Section 3.54.060). This change will reduce confusion in administration of the TDIFs and ensure that the most appropriate fees are charged for each project, supporting reasonable and proportionate project mitigation of transportation

impacts. This approach is consistent with the City's historic practice in assessing impact fees and also streamlines the existing fee modification and reduction process (see discussion to follow). Schedules of fees for various common land uses will be developed and published administratively for ease of reference. Applicability of the ETDIF, WTDIF, and BFDIF to Accessory Dwelling Units, as defined in CVMC 19.58.022, is also clarified in the new ordinance (see Section 3.54.020(G)).

Updates to the fee waiver, reduction, and deferral provisions are recommended in order to simplify the subject process and to broaden the City Council's deferral authority. The existing TDIF ordinances provide for fee waivers, reductions, or deferrals in the following circumstances:

#### **ETDIF, WTDIF, & BFDIF Ordinances**

- If a Developer contends that the fee assessed to their project is unconstitutional or unrelated to mitigation of the impacts of their project, they may apply to the City Council for a modification or reduction of the fee.
- Developments designated and intended as a temporary use (10 years or less) may apply to the City Council for a waiver or reduction.
- Deferrals may be granted by the City Council based on economic hardship, if the use offers a significant public benefit, market rate interest is charged, and the deferred amount is adequately secured by agreement with the applicant.
- The above applications to the City Council for modification, reduction, or deferral of the fee must be made in writing and filed with the City Clerk no later than ten (10) days after notice of the public hearing on the development project, or, if no public hearing is required, no later than ten (10) days from building permit application. The City Council must then hold a public hearing to consider the application. If granted, an agreement must be entered into between the City and the applicant or property owner.

#### **ETDIF Ordinance Only**

- Developers of golf courses that contend that the ETDIF is unrelated to mitigation of their project may apply to the City Council for a reduction in fees based on the nature of the proposed golf course. An interim reduction may be granted based upon a preliminary traffic study that supports the developer's contention. The final fee determination is based on a traffic study to be conducted within the fourth year of operation of the fully developed golf course, to be paid for by the developer and submitted for approval by the City's Public Works Director. If the developer fails to submit the traffic study and receive the City's approval, the entire fee imposed by Chapter 3.54 becomes immediately due and payable. If a reduction is permitted, the City Council may allow the developer to pay the impact fee over a 10-year period.

Staff recommends the following provisions be included in the new consolidated TDIF chapter, to be applied to the ETDIF, WTDIF, and BFDIF (see Section 3.54.160):

- If a Developer contends that the fee assessed to their project is unconstitutional or unrelated to mitigation of the impacts of their project, they may apply to the City Manager for a modification or reduction of the fee. The City Manager shall make a determination within ten (10) business days of

the developer's application for modification or reduction. The developer may appeal the City Manager's decision to the City Council.

- Developments designated and intended as a temporary use (10 years or less) may be granted a fee waiver, as determined by the City Manager, or designee. The developer may appeal the City Manager's decision to the City Council.
- Appeals shall be filed with the City Clerk within ten (10) business days of the City Manager's decision. The City Council should consider the appeal within 60 days after its filing and the decision of the City Council will be final.
- Deferrals may be granted by the City Manager or designee based on economic hardship, if market rate interest is charged, and the deferred amount is adequately secured by agreement with the applicant.
- Deferrals may be granted by the City Manager or designee if a project provides a significant public benefit, market rate interest is charged, and the deferred amount is adequately secured by agreement with the applicant.
- Elimination of the special golf course reduction and deferral provision (ETDIF only).
- Creation of a new provision that would apply only to hotels/motels that do not receive any other form of economic subsidy from the City. These projects would be allowed to apply for a deferral and/or reduction in their TDIFs (ETDIF, WTDIF, or BFDIF). If approved, a deferral could be granted for a period of up to four (4) years from the Certificate of Occupancy for the project. The deferral would require an agreement between the City and the developer, to include an acceptable security instrument. The final determination of fees for the project would be based on a traffic study to be paid for by the developer and submitted for approval by the Director of Development Services. If the developer fails to submit the traffic study and obtain City approval, the entire fee imposed would be immediately due and payable. The outstanding balance would also become due and payable if the developer transfers the property to any other party without the reasonable advance approval of the City and the acceptance of the other party of the obligation.

Additional recommended updates include inserting references to the City's newly adopted procurement guidelines for developer constructed public works (CVMC 2.56.160(H)) and the City's Interfund Loan Policy (City Council Policy 220-06). Updates to allow for interfund loans outside the annual budget adoption process are also recommended (see CVMC 3.54.190(A)).

The previously authorized annual inflationary updates to the ETDIF, WTDIF, and BFDIF are preserved (see CVMC 3.54.090). The next such increase will be effective October 1, 2018.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining 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.

## **LINK TO STRATEGIC GOALS**

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. Consolidating the Eastern Transportation Development Impact Fee, Western Transportation Development Impact Fee, and Bayfront Development Impact Fee into a single Transportation Development Impact Fee chapter of the Chula Vista Municipal Code supports the Operational Excellence goal by enhancing consistency between transportation DIF programs and simplifying ordinance administration. Streamlining and simplifying the transportation DIF reduction, waiver, and deferral processes supports the Economic Vitality goal as it seeks to lower economic barriers to new growth, while ensuring projects continue to mitigate their transportation impacts.

## **CURRENT-YEAR FISCAL IMPACT**

All costs associated with the preparation of this report are borne by the transportation development impact fee programs, resulting in no net impact to the General Fund or the Development Services Fund.

## **ONGOING FISCAL IMPACT**

The proposed ordinance consolidates the City's three transportation development impact fee programs into a single chapter of the Chula Vista Municipal Code with no change to the rates. No impacts to fee program revenues are anticipated as a result of this action.

Streamlining and simplifying the fee reduction, waiver, and deferral process and creating a new process for deferral and reduction of fees for uses that generate a significant public benefit, including hotels/motels, supports development of economically desirable uses while ensuring the City continues to collect appropriate fees to mitigate the impacts of these facilities. If adopted, these new provisions are anticipated to incentivize the development of projects that generate positive fiscal impacts to the City's General Fund.

## **ATTACHMENTS**

1. TDIF Boundaries
2. Existing CVMC Chapter 3.54 (Transportation Development Impact Fee)
3. Existing CVMC Chapter 3.55 (Western and Bayfront Transportation Development Impact Fees)
4. Proposed Replacement CVMC Chapter 3.54 (Transportation Development Impact Fees)

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