



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: June 14, 2022

Approved

Date

6/14/22

SUBJECT: DEVELOPMENT FEE FRAMEWORK STATUS REPORT

RECOMMENDATION

Accept the status report on work to create a Development Fee Framework.

BACKGROUND

On March 5, 2019, at the Council Priority Setting Session, the City Council added the Universal Development Fee to the priority list. This priority directed staff to explore creating a universal development fee and structure for residential development that contains all current development taxes and impact fees. The goal was to provide developers and the public with a transparent view of how fees are calculated to make it easier to estimate and understand fees.

On November 5, 2019, staff provided a report and received feedback from the City Council on the Universal Development Fee. At this meeting, staff recommended pursuing a Development Fee Framework (Framework) that would align existing major development fees around shared guidelines rather than the development of a new Universal Development Fee. While it is possible that the City could undertake the work of a Universal Development Fee, this would be both a time- and resource-intensive process and present possible legal challenges. Staff also received direction from the City Council that the outcome of the Framework should not result in any increase or decrease to existing fees and that these fees must continue to mitigate the impact of new development. Further, staff was directed to explore using a metric of net rentable square footage and explore tying future fee adjustments to indices based on the cost of residential development.

In March 2020, a report to the Community and Economic Development (CED) Committee was scheduled but the hearing was canceled due to the onset of the pandemic. The planned report was later released as an information memo. In February 2021, staff provided an update to the CED Committee on the Framework and hosted a virtual community engagement meeting. The work

completed at the time of the report was the adoption of new geographic areas by the City Council for the Inclusionary Housing Ordinance that would also serve as the geographic areas for the Framework.

ANALYSIS

The concept for a Universal Development Fee that later evolved into the Development Fee Framework grew out of the work in the Housing Crisis Work Plan and especially the Report on the Cost of Development (Report) that both started in 2018. The Report gave a more holistic view of how the City's fees and taxes factor into the feasibility of residential projects. It also brought to light other structural challenges with City fees. The best example of this is having some fees charged per unit whereas others are charged on a per square foot basis.

In the past, fee increases or changes were often considered independently of other fees and taxes which made it difficult to gauge the true impact of the increase or change. Developers look at financial feasibility at multiple points in the development process. The earlier that fees and costs can be understood, the easier it is for a developer to account and plan for anticipated costs. If fees are added, or increased, later in the development process it can be detrimental to the financial feasibility of a project. While the Framework is not proposing to increase or decrease fees, it is intended to help facilitate housing production by making the City's costs easier to predict and understand. The feedback consistently heard from the development community is that certainty, predictability, and clarity are very important.

The Framework is intended to be a guide for implementing planned changes to existing fees and taxes. It has been focused on residential development and on the three major development fees/taxes: 1) Inclusionary Housing Ordinance; 2) Parkland Dedication/Park Impact Ordinances, and 3) Construction Taxes. While there are other fees and charges collected by the City, the analysis from previous iterations of the Report showed that these three represent 60 to 80 percent of the total City's fees and costs added to residential development and generally represent 6 to 9.6 percent of total development costs. The Framework is also meant to ensure that any future consideration of new development-related fees or taxes would be created in alignment with the Framework.

As has been described in previous reports¹, the Framework contains four common elements that are intended to align the structure and administration of the major development fees/taxes. These elements are the following:

¹ <https://sanjose.legistar.com/View.ashx?M=F&ID=9181318&GUID=4343C276-94F9-46CE-9D36-86D409040CD4>

- 1) *Metric of Calculation* – Defining the metric used to assess fees as square feet rather than per unit. This also includes standardizing citywide definitions of square feet.
- 2) *Development Geography* – Defining standardized geographic areas of the City used in the administration of fees. These areas have now been defined through the Inclusionary Housing Ordinance. These areas will be used in future economic analysis of residential development and in any updates to the fees.²
- 3) *Timing of Payment* – Aligning the time at which fees are paid to the City. Previous Council direction included shifting the timing of payment to later in the construction process to help lower the expense on the development.
- 4) *Development Typology* – Standardizing the definitions of building types (for example, high-rise, etc.) if typology is used within a particular fee.

Development Fee Working Group

Starting in January 2022, a Development Fee Framework Working Group (Working Group) was convened by the Office of Economic Development and Cultural Affairs composed of executive staff from the Department of Planning, Building, and Code Enforcement, Housing Department, Department of Parks, Recreation, and Neighborhood Services, and Department of Transportation. The purpose of the Working Group is to further refine the elements of the Framework and to determine how to move forward with implementation. The Working Group meets twice a month and has developed several agreed-upon outcomes related to the implementation of the Framework and further refinement of the individual elements of the Framework that are detailed below. The outcomes of the Working Group thus far include a clearly defined objective for the Framework and two goals.

Development Fee Framework Working Group Outcomes	
<i>Objective</i>	Simplify the administration and calculation of major residential development fees and taxes to provide transparency and certainty to the public and development community.
<i>Goal #1</i>	Adoption of a formal policy by the City Council to memorialize the Development Fee Framework elements and parameters.
<i>Goal #2</i>	Develop a webpage or other resources that outlines current fee estimates and conditions organized by geography that could be used to evaluate City costs quickly and easily.

² <https://csj.maps.arcgis.com/apps/webappviewer/index.html?id=8518bc095ae54f4ea025d7743c650881>

Goal #1: Accomplishing this goal will entail the City Council formally adopting a proposed Development Fee Framework. The form of adoption, e.g., Council Policy or resolution, etc., has not yet been defined but would include a clear definition of all the elements within any current or future residential development impact fee or tax. The Working Group will continue to work toward the completion of this goal by spring of 2023. Staff proposes to add Goal #1 as an additional work item in the Housing Crisis Work Plan. Staff also plans to initiate further public outreach related to this goal.

Goal #2: The work to complete this goal is partially underway as part of the current Housing Crisis Work Plan. The Housing Crisis Work Plan includes the development of an impact fee registry. The impact fee registry is intended to be a single location where developers can find the latest information about each impact fee or tax and identifies specific staff in the responsible department that can be contacted for questions. Goal #2 will build off the development of the fee registry and will include development of a table that provides fee estimates per square foot by geography for a development. These fee estimates can be used by the development community to determine the cost of City fees and taxes at the front end of the development process.

Other Modifications to the Development Fee Framework

The Working Group has discussed in further detail the individual elements of the Framework and how some should be defined or modified.

Timing of Payment: Staff is interested in shifting the timing of payments to the scheduling of the final inspection. A project could not schedule its final inspection until fees have been paid. This places the timing of payment close to the issuance of Certificate of Occupancy, but also makes collection and administration of the fees/taxes easier. However, the current permit system would need to be modified to facilitate this change as there is no mechanism to prevent scheduling final inspections to ensure that all fees have been paid.

Construction Taxes: There are currently four different construction taxes related to residential development. The taxes do not have specific geography and are collected citywide. The taxes are also generally based on building valuation. Formal changes to these taxes generally require voter approval. Rather than make formal changes to the construction taxes, the goal will be to provide accurate assumptions and estimates through Goal #2. However, the one exception to this could be the timing of payment for the construction taxes. The City currently allows high-rise residential development to defer its payment of construction taxes until final inspection rather than paying at issuance of building permit through the Downtown Residential High Rise Program.

CONCLUSION

Staff continues to work on the development of the Framework by way of the Working Group.

The Working Group has developed a defined objective and two major goals to implement the Framework.

EVALUATION AND FOLLOW-UP

The Working Group will continue to meet to accomplish Goal #1 to formally adopt a Framework policy with an estimated completion in spring 2023. Additionally, staff will add Goal #1 as a work item in the Housing Crisis Work Plan as the Framework was removed from the City Roadmap Backlog. Goal #2 is underway as staff is working to develop an impact fee registry as a part of the Housing Crisis Work Plan with completion anticipated by fall 2022. An update to the City Council on the Report on the Cost of Residential Development is anticipated in August 2022 and will provide an additional opportunity to discuss the Framework.

PUBLIC OUTREACH

The Office of Economic Development and Cultural Affairs, in coordination with the Housing Department and the Department of Parks, Recreation and Neighborhood Services, hosted a virtual outreach meeting on February 11, 2021. A previous outreach meeting on this topic was also held in March 2020. Staff intends to conduct further public outreach on this item to receive feedback, particularly as Goal #2 is developed further.

COORDINATION

This memorandum was coordinated with the Department of Parks, Recreation and Neighborhood Services, Department of Planning, Building and Code Enforcement, Housing Department, and City Attorney's Office.

/s/

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