

Planning Commission

June 13, 2019

- Proposal:** FEE DEFERRAL PROGRAM AMENDMENT - Citywide - PLN2019-00309 - To consider recommendation to City Council of a City-initiated Zoning Text Amendment to amend FMC Chapter 18.290 (Development Impact Fees) and FMC Chapter 18.165 (Density Bonus and Affordable Housing Incentives) to modify the timing of payment of development impact fees for certain types of development projects, and to consider an exemption from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that the proposed amendments are not a project which has the potential to cause a significant effect on the environment.
- Recommendation:** Recommend approval to City Council
- Location:** Citywide
- People:** Wayne Morris, Deputy Community Development Director, (510) 494-4729, wmorris@fremont.gov
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EXECUTIVE SUMMARY

On April 2, 2019, City Council conducted a work session to discuss balanced growth, one of its top priority issues. At this work session, Council reviewed Fremont's current framework for reviewing residential development projects, housing approval data over the past few years, recent and proposed State legislation related to housing development, and discussed actions Council could pursue to modify current housing development practices. A specific action Council elected to pursue was modification of the fee deferral program to only allow affordable housing and non-residential development to defer payment of certain fees. The proposed Zoning Text Amendment would modify the Fee Deferral Program as directed by City Council on April 2, 2019.

Staff recommends that the Planning Commission recommend that the City Council adopt the proposed Zoning Text Amendment ordinance to amend FMC Chapters 18.290 and 18.165 to only allow affordable housing and non-residential development projects to defer payment of impact, art, and affordable housing fees until after building permit issuance.

BACKGROUND AND PREVIOUS ACTIONS

Development impact fees are established under the Government Code Section 66000 *et. seq.*, known as the Mitigation Fee Act. This act allows local agencies to establish fees to charge new development their fair share of the cost to expand or construct new public facilities to support this new development.

Fremont has five development impact fees, including: Traffic; Capital; Fire; Park Facilities; and Parkland. These five fees include the following:

- *Traffic impact fees* fund traffic facilities needed to serve new development, including intersection improvements, roadway segment improvements (distances between intersections), bicycle and pedestrian improvements (e.g., sidewalks, bike lanes),

signal interconnect improvements (adjustments to signal timing as traffic patterns and intensity change), and general signal/intersection projects (i.e., conversion of non-signalized to signalized intersections when warranted).

- *Capital facilities fees* fund the construction or purchase of buildings, land, and equipment that are part of the system of capital facilities serving new development (e.g., city administration, senior service facilities, police facilities, library service facilities).
- *Fire facilities fees* fund fire protection facilities in the form of buildings and equipment needed to serve new development.
- *Park facilities fees* fund the initial facilities and improvements (e.g., play areas, restrooms, ball fields) at City parks.
- *Parkland fees* fund the acquisition of new parkland to maintain the City's standard of five acres of parkland per 1,000 residents.

In addition, residential projects sometimes pay two additional fees that were not established under the Mitigation Fee Act but which are also eligible for deferral:

- *Art District Fees:* There are four zoning districts that require payment of an art fee: Downtown, City Center, Warm Springs Innovation, and Ardenwood Technology Park Planned District (P-2015-23).
- *Affordable Housing Fees:* Under the City's Affordable Housing Ordinance, residential developers have the option to pay a fee toward off-site construction of affordable housing in-lieu of building on-site affordable housing.

Until 2009, the Development Impact Fee Ordinance required payment of impact fees prior to building permit issuance. In 2009, in response to a severe slowdown in development activity due to the economic recession, Council approved an amendment to the Development Impact Fee Ordinance to allow deferral of fee payment up to 18 months after building permit issuance or prior to issuance of the certificate of occupancy, whichever came first. The program is implemented via a Deferral Agreement, which is recorded on each property the fees are deferred on as a lien. With the lien on the property, the applicant cannot sell the property because lenders will not issue a loan to a purchaser with the lien in place. When the fees are paid, the lien is removed. Since this change became effective, the majority of new development applicants have requested to defer their impact fees.

Over the past 10 years, approximately \$168 million in development impact fees and affordable housing fees have been deferred. Of this \$168 million, 78% (\$131 million) was for market rate housing projects and the remaining 22% (\$37 million) was for affordable housing and non-residential projects. In addition, \$54 million in affordable housing fees have been deferred.

PROCEDURE FOR TONIGHT'S HEARING

The Planning Commission is charged with completing the following tasks:

1. Hold public hearing.

2. Find that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that the proposed ordinance amendments are not a project which has the potential to cause a significant effect on the environment; and
3. Recommend that City Council adopt an ordinance, as shown in Exhibit "A," approving the proposed Zoning Text Amendment PLN2019-00309 to amend FMC Chapter 18.290, Development Impact Fees, and FMC Chapter 18.165, Density Bonus and Affordable Housing Incentives, to only allow affordable housing and non-residential development to defer payment of development impact fees after building permit issuance.

PROJECT DESCRIPTION & ANALYSIS

At its April 2 work session, Council provided direction to staff to end the Fee Deferral Program for market rate housing projects. Councilmembers indicated that incentives to developers to promote market rate residential development were no longer necessary or appropriate, and also noted that timely payment of fees should allow timely use of the fees to address the impacts from residential development.

Four FMC Title 18 sections are proposed to be amended to achieve Council's direction, including three sections in FMC Chapter 18.290, Development Impact Fees, and one section in FMC Chapter 18.165, Density Bonus and Affordable Housing Incentives. These changes are provided in Informational Enclosure 1 in track changes and generally include:

1. Definitions (FMC Section 18.290.050): Adding definitions for "affordable housing" and "market rate housing." Affordability restrictions include a regulatory agreement on any property with a unit identified as "affordable," which ensures the affordable rental or for-sale rate will be maintain for the life of the agreement. The affordability restriction is typically 30 years for for-sale units (also known as below market rate (BMR) units) and up to 99 years for rental projects.
 - " 'Affordable housing' means any residential unit restricted for persons at or below 120% of the area median income." This income limit includes all persons at or below the established moderate income level.
 - " 'Market rate housing' means any residential unit with no affordability restrictions (excluding the manager's unit in an affordable housing project)."
2. Modifying the Timing of Payment After Building Permit Issuance section (FMC Section 18.290.070): Specifying that the payment of fees for affordable housing units and non-residential buildings may be deferred until after building permit issuance;
3. Adding an "Exclusion" to FMC Section 18.290.110: Clarifying that market rate housing projects consisting of 2 or more units are excluded from deferring the payment of impact fees until after permit issuance allowed for under FMC Section 18.290.070.
4. Removing FMC 18.165.080(a)(5), which allows projects entitled to a density bonus to defer impact fee payment until after permit issuance as a concession under this ordinance. FMC Chapter 18.165, Density Bonus and Affordable Housing Incentives, is based on State legislation requiring local agencies to provide increased density for affordable and senior housing projects. The majority of the provisions in this

ordinance are required by State law; however, the fee deferral concession is specific to Fremont and not required by State law. Consistent with Council's direction, removing this provision would ensure that market rate housing would not be able to defer impact fees.

FISCAL IMPACT

All costs associated with managing the Fee Deferral Program are currently paid for by the applicants requesting the service, so there should be no net fiscal impact related to program administration.

The effect of the program change on impact fee collections is likely to be mixed. On the one hand, by collecting the fees sooner, the City should be able to use the fees sooner for infrastructure/affordable housing, which would save money in an environment of escalating construction costs such as that existing today. On the other hand, eliminating fee deferrals may increase borrowing costs for residential development, which in some cases could prevent projects from being built, which in turn would reduce the impact fees collected.

ENVIRONMENTAL REVIEW

The proposed project is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that is the proposed ordinance amendments are not a project that has the potential to cause a significant effect on the environment.

PUBLIC NOTICE AND COMMENT

On May 9, 2019, staff conducted an informational meeting on the proposed fee deferral program amendment. No persons attended the meeting. On May 28, 2019, a public hearing notice display ad was posted in the *Tri-City Voice*. Also on May 28, 2019, the 1,343 persons on the NotifyMe *Builder's Interest List* received the public hearing notice for this item.

RECOMMENDATION

1. Hold public hearing.
2. Find that the project is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) in that the proposed ordinance amendments are not a project which has the potential to cause a significant effect on the environment; and
3. Recommend that City Council adopt an ordinance, as shown in Exhibit "A," approving the proposed Zoning Text Amendment PLN2019-00309 to amend FMC Chapter 18.290, Development Impact Fees, and FMC Chapter 18.165, Density Bonus and Affordable Housing Incentives, to only allow affordable housing and non-residential development to defer payment of development impact fees after building permit issuance.

ENCLOSURES

- Ord Zoning Amend fee deferral 2019 final draft