



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 04/02/2024

DATE: March 28, 2024
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Receive a Report on the Transportation Impact Fee and Provide Direction

RECOMMENDATION:

Receive a report on the Transportation Impact Fee and provide direction.

BACKGROUND:

On January 16, 2024, Town Council took a series of actions that resulted in the establishment of a Transportation Impact Fee (TIF) to replace the Town's Traffic Impact Fee. The actions included adoption of a Transportation Impact Nexus Study, modifications to Section 15, Article VII of the Town Code, and resolutions to replace the Traffic Impact Fee with the updated TIF and modify Town Council Policy 1-08: Transportation Impact Policy.

During the consideration of this item, questions were asked about the project list, its associated costs, and how those projects relate to new development. During the hearing, staff provided information on how the cost estimates were generated and clarified how the fee was calculated. Specifically, staff indicated that the new fee is based on the historical level of investment the Town has made in its transportation network and that new development would contribute to implementation of the transportation project list at a rate that does not exceed the Town's historic level of investment. Staff indicated that the legal footing for this was sound because the improvements are needed to meet demands on the transportation infrastructure that will arise from future development.

Following the meeting, staff continued to consider and discuss the use of historic level of investment as the method of calculating the new fee. After conferring with the Town's consultant who prepared the Nexus Study, and third party legal and technical advisers, staff is bringing this item back to Town Council for discussion and direction.

PREPARED BY: Nicolle Burnham, Parks and Public Works Director
Gabrielle Whelan, Town Attorney

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

DISCUSSION:

Context of Adopted Nexus Study and Fee

The TIF was adopted under the California Mitigation Fee Act (often referred to as AB1600) which is codified in Government Code Sections 66000 and following. Per the Mitigation Fee Act, in adopting the fee the Town must: 1) identify the fee's purpose and use; 2) determine a reasonable relationship between the fee's use and the type of land use development project(s) required to pay the fee; 3) determine a reasonable relationship between the need for the public facility(ies) and the type of land use development projects required to pay the fee; and 4) demonstrate a reasonable relationship between the amount of the fee and the costs of the facilities needed to cover developmental impacts. Compliance with these requirements is documented in the Transportation Impact Fee Nexus Study adopted on January 16, 2024.

In addition, Government Code Section 66016.5, which is also part of the Mitigation Fee Act, provides that, when applicable, a nexus study shall identify the existing level of service for each public facility, identify the proposed new level of service, and include an explanation of why the new level of service is appropriate. The term "level of service" in this context pertains to the quality or amount of service being provided for a particular type of infrastructure. This should not be confused with "intersection level of service" which measures the volume and rate of vehicles going through an intersection.

The Act does not define "level of service," and jurisdictions have used a variety of methods to calculate impact fees. Calculations can often vary based on the type of impact fee being calculated. For example, traffic impact fees have historically been based on intersection level of service (LOS) for roadways with impacts based on detailed traffic modeling of vehicle delays at each intersection.

The intersection LOS methodology works well when a list of capital projects is focused on moving vehicles quickly and efficiently and for developing a traffic impact fee. However, this method does not lend itself to non-vehicular transportation improvements which are a large focus of the Town's adopted General Plan and Bicycle and Pedestrian Master Plan. For this primary reason, the methodology for the new Transportation Impact Fee (TIF) was not based on intersection LOS. Moving away from an intersection LOS analysis was specifically supported by the following reasons:

- Intersection LOS is a valid metric for assessing the operation of intersections by measuring vehicular delay. However, LOS is not helpful in evaluating the demand for non-vehicular transportation improvements. The only project on the Town's project list that would lend itself to an intersection LOS analysis is the State Route 17 Corridor Congestion Relief Project.

DISCUSSION (continued):

- Intersection Level of Service traffic analysis does not account for the full range of transportation-related infrastructure, including the transit, bicycle, and pedestrian projects that have been identified in the Town's adopted Plans.

Given the shortcomings of the intersection LOS method, a historic level of investment or "asset based" approach was used to calculate the TIF. The Nexus Study (<https://mccmeetingspublic.blob.core.usgovcloudapi.net/losgatos-meet-6f19635f84ad4713a27b577cff420113/ITEM-Attachment-001-f9100b2185eb4fd8bd34a179bea1253f.pdf>) defined Level of Service to mean historic level of investment in transportation-related infrastructure. This is a method that is widely used for park impact fees and more recently is being used by other jurisdictions for transportation impact fees (Attachment 1). Its use for transportation impact fees allows for a broad range of projects to be efficiently funded, rather than just those that can be assessed by intersection LOS.

Alternatives Analysis

In conducting its recent analyses, staff has identified potential alternatives for modifying the Nexus Study and the TIF. Staff is not recommending a specific option at this time. Attachment 2 provides a summary of the alternatives and their advantages and disadvantages. Each alternative is described in more detail below.

Option 1. Keep Adopted Analysis and Associated Fee (Asset Based Approach)

The analysis presented to Town Council for TIF adoption started with a calculation of the historic level of investment of all transportation improvements. The ensuing analysis is underpinned by the foundation that the proposed TIF charged to new land use development projects cannot exceed the historic level of investment that the Town has made in its transportation network. In other words, new development would fund a reasonable portion of the future improvements that cannot be funded in other ways (i.e., grants, etc.) because the Town has already funded at a historic, calculated level. The historic level of investment was calculated to be \$57,907 per dwelling unit. The proposed fee was calculated to be \$16,051 for an average sized single-family residence (or per Dwelling Unit Equivalent).

This method was selected because it provided a mechanism to fund the full range of transportation-related projects identified in the Town's adopted Plans. This approach is believed to fairly apportion project costs to new development in that the new development is not being asked to pay more than the Town's historic investment in its transportation infrastructure assets. While widely used for certain categories of impact fees (e.g., parks) and

DISCUSSION (continued):

used by other jurisdictions for transportation impact fees, this method is legally untested in its use for calculating transportation impact fees.

Option 2. Refine the Adopted Analysis (Modified Asset Based Approach)

This alternative retains the method, clarifies the assumptions, and revises certain calculations used for the Nexus Study. With this option, staff would evaluate the following assumptions and revise the analysis accordingly:

- Evaluate and review calculations around the historic level of investment. This would involve comparing costs to current bid pricing for similar work, adjusting if necessary, and then depreciating the value of the Town's transportation assets. The result would be a maximum justifiable fee of less than the \$57,907 historic level of investment per dwelling unit.
- Refine costs of transportation investments on the project list by adjusting to 2024 dollars and providing further analysis of funding expected from other sources. Staff is confident that project costs presented in the project list (Appendix Section 1 of the Nexus Report) represent the best available information. Specifically:
 - The \$111M cost of the Highway 17 Highway 9 item is from VTA;
 - The \$25M for the Highway 17 Overcrossing is from the design consultant working on the project;
 - The Shannon Road Widening and Safety Improvements cost is from the design consultant based on their 95% complete plans (although soft costs for this project are currently increasing);
 - The traffic signal program costs are from the Town's Traffic Engineering Team and assumes \$1M per signal for design and construction. The Town owns 31 signals, and replacement of eight signals seemed reasonable given past activity;
 - Projects labeled as Carryover were in the 2014 project list and were adjusted to 2022 dollars; and
 - Costs for the remaining projects were estimated by the consultant or taken from Town documents such as the Bicycle and Pedestrian Master Plan and adjusted to 2022 dollars.

As such, staff would not propose to revisit the base costs of the projects other than escalating them to 2024 dollars and would analyze in more detail the "Estimated Funding from Other Sources" which may include grants or other programs, resulting in a potentially different "Unfunded Cost Allocated to TIF Calculation."

As with Option 1, the Town's consultant and their subconsultants believe this approach fairly apportions project costs to new development in that the new development is not being asked to pay more than current the Town's historic investment in its transportation infrastructure

DISCUSSION (continued):

assets. It is important to note that staff has not completed analysis of this option and so cannot say if the resulting fee would be higher, lower, or the same.

Option 2A: Option 2 with Intersection Level of Service Analysis of Highway 17 Project

In this scenario, staff would make the revisions to historic level of investment and project cost calculations noted under Option 2 and would remove the Highway 17 project from the project list and analyze that project using the intersection Level of Service analysis. In this scenario, there would be two separate fee calculations: one for bicycle and pedestrian projects and one for the Highway 17 project. The total fee would be the sum of these two resulting fees.

Using intersection Level of Service for the Highway 17 project would mean the cost of the improvements for this project would be apportioned to new development based on the volume of traffic generated by those land use developments. As noted previously, this is the method used to historically calculated traffic impact fees.

This option provides a mechanism to generate funding for bicycle and pedestrian projects while analyzing the traffic-related project (Highway 17) in a more traditional way. It also allows for fees to be generated to support implementation of the full breadth of the Town's adopted Plans governing transportation.

Option 3: Convert to a Basic Fair Share Approach

Under this alternative, the use of historic level of investment as the nexus would be eliminated. If this option is selected, staff does recommend adjusting the project list as recommended in Option 2 to refine the project costs and adjust them the 2024 dollars. Further analysis would then be completed to consider which transportation projects would primarily benefit new land use development over existing residents.

Following refinement of the project list, the costs of each project would then be apportioned to new development based on this resulting analysis. In its simplest form, this could mean dividing the total cost of the project list by the percentage increase of dwelling unit equivalents projected. The increase in dwelling units is calculated at 10% (see Table 3 of the Nexus Study). The portion of the project list would then be apportioned to new development would be allocated across the 2,598 Dwelling Unit Equivalents (DUEs) calculated in the Nexus Study.

A more complicated analysis would require evaluating each transportation project location and its proximity to new development and then apportioning specific projects to new versus existing development. That is not recommended due to the complexity of the required analysis.

DISCUSSION (continued):

The “Fair Share” method has the advantage of identifying how much new development would contribute to the transportation improvements. It is important to note that staff has not completed analysis of this option and so cannot say how significantly it would impact the fee calculation. Initial considerations suggest that the resulting fee could be lower than the previous fee of \$1,104 per vehicle trip, or approximately \$10,000 per single family residence.

Option 4: Use Only an Intersection Level of Service Analysis

As noted previously, intersection level of service (LOS) has been the historic method of traffic impact fee calculation in many communities. Under the intersection Level of Service method, traffic modeling is completed and fees are charged based on the additional traffic generated by new land use developments. This method is not applicable to funding for bicycle and pedestrian improvements.

The only vehicle-related project on the Town’s project list would be the Highway 17 project. If this method were used, all other projects would be removed from the project list and would not be eligible for funding through the Town’s impact fee program.

Option 5: Combine Options 3 and 4

For this option, staff would recommend adjusting the project list as recommended in Option 2 and Option 3 to refine the project costs and adjust them to 2024 dollars. The Highway 17 project would be removed from the project list and analyzed separately using the LOS method discussed in Option 4. The fee associated with Bicycle and Pedestrian Projects would be calculated as discussed in Option 3. The two resulting fees would then be added together to yield the final Transportation Impact Fee.

This option has the advantage of identifying how much new development would contribute to the transportation improvements while using the traditional LOS analysis for the Highway 17 project. It is important to note that staff has not completed analysis of this option and cannot say how significantly it would impact the fee calculation. Initial considerations suggest that the resulting fee could be lower than the previous fee of \$1,104 per vehicle trip, or approximately \$10,000 per single family residence.

CONCLUSION:

Staff looks forward to Town Council’s feedback on these options and its direction regarding next steps.

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SUBJECT: Receive a Report on Transportation Impact Fees and Provide Direction

DATE: March 28, 2024

COORDINATION:

This agenda item was coordinated with the Town Manager, the Town Attorney, Finance Director, outside legal counsel, and DKS Associates.

FISCAL IMPACT:

There is no fiscal impact associated with this report. Depending on the direction provided by Town Council, modifications to the Transportation Impact Fee Program directly affect the availability of future funding for transportation-related capital improvements.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachments:

1. Asset Based Transportation Impact Fees in California (Partial List)
2. Summary of Alternatives