



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	<b>Adopt a Resolution to Authorize the 2019 Adjustment to the Transit Area Specific Plan (TASP) Infrastructure Costs and Transit Area Development Impact Fees (TADIF) and to Allow a Limited Deferral of TADIF for Certain Projects with Entitlements (Staff Contact: Ned Thomas, 408-586-3273)</b>
<b>Category:</b>	Public Hearings-Community Development
<b>Meeting Date:</b>	10/1/2019
<b>Staff Contact:</b>	Ned Thomas, Planning Director, 408-586-3273 Kevin Riley, TASP Manager, 408-586-3292
<b>Recommendations:</b>	Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on current cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP) and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B to the Resolution, with the deferred payment provision to expire 12 months after the effective date of the fee increase.

### **Background:**

With the adoption of the Transit Area Specific Plan (TASP) in 2008, the City Council adopted a fee program to share the costs of public improvements among all new developments approved and constructed within the TASP area. The Council last adopted and applied the current Transit Area Development Impact Fees (TADIF) in March 2014, and staff has identified the need for a near-term update of fees to recover costs that have escalated since 2014.

The consultant contract with Economic & Planning Systems Inc. (EPS), approved by the City in January 2019, contemplates a comprehensive update of the TASP development program and a concurrent update of development impact fees to reflect TASP infrastructure needs. The work by EPS is being provided in two parts, with the initial effort being an immediate (interim) update from 2014 to 2019 of the costs of the infrastructure program and an estimation of the appropriate per-unit fees (rates) to match the percentage of growth of those costs at 2019 levels. This simplified approach would provide a “catch up” fee schedule that will be applied by development categories to pending projects that have not yet obtained building permits prior to new fee resolution becoming effective. The second and more comprehensive element of the work by EPS will come later following completion of the pending update of the overall development scenario and related environmental work for the TASP. That pending TASP Update 2020 may reflect an expanded TASP area, new opportunities for development, and some limited additional public improvements to serve the potential development capacity.

Preparation of the attached fee resolution follows staff disclosure of updated fee estimates to Plan Area developers, businesses, property owners and other interested parties at the Community Development Roundtable meetings on June 6 and August 15, 2019. Staff has also had follow-up conversations and meetings with individual developers to discuss how the proposed fee changes would affect their pending projects.

The purpose of the impact fee is to proportionally share the costs of public infrastructure that benefit the new residences and businesses that are developed within the TASP area and thereby minimize adverse overburdening of other existing City facilities. The TASP commitment to parks, roadways, pedestrian

pathways, utilities and other services and amenities is an important part of the marketing of new development within the TASP area.

### **Analysis:**

The City has authority to impose development impact fees under the State's Mitigation Fee Act (Government Code Section 66000, *et seq.*) and as codified in Title VIII, Chapter 4 of the City's Municipal Code, which allows adjustment of such fees "from time to time" by resolution. The last fee resolution, currently in effect since March 2014, calls for infrastructure costs listed in the TASP Basic Infrastructure Program (BIP) to be adjusted automatically annually using a San Francisco area based cost index (Resolution 8344, Section 9). EPS has completed the infrastructure cost escalation to 2019, as provided in the attached Technical Memorandum dated May 29, 2019 (Exhibit A to the fee resolution).

Fees intended to address cost recovery on a proportional share basis from new development are adjusted periodically at the City's discretion. Fee share allocations vary by development type insofar as they include both the costs of acquisition and development of parklands and the costs of construction of facilities. The EPS memorandum presents an increase in fees based solely on the growth of impact fees between 2014 and 2019 and then allocates those fees across the various development categories based upon the benefits to each category. For the purposes of this interim adjustment, no changes have been made to either the components of the BIP or to the development scenario previously utilized for the adopted 2014 fee schedule.

The 2014 fee study had established a reallocation of fees across a reduced volume of anticipated development based upon a weaker economic climate at that time, but as the City recovered from the Great Recession the improving economic conditions brought impressive residential interest and production to the TASP area. Current figures show that 6,955 of the 7,109 planned housing units in the 2008 TASP are occupied, are under construction or are entitlement at this time. There are only 154 of the original 7,109 units in TASP that have not yet been entitled.

Permit records indicate that as of March 2019 and including the latest entitlements, there are approximately 1,964 (over 28%) of the entitled 6,955 units that have not yet been issued building permits. Some of those projects identified as under permit review could be issued permits prior to the effective date of this proposed fee resolution and therefore would not be subject to revised fees.

The EPS Memorandum calculates the fee allocations based upon design and construction costs that have cumulatively increased 16.2%, and land values that have cumulatively increased 43.8%. The total costs to fund the TASP BIP increased by nearly \$50 million, from \$233,788,200 (2014) to \$286,968,018 (2019), which represents an overall 22.75% increase for the combined commercial and residential components. To cover this increased cost, EPS has calculated a 2019 fee rate of \$40,487 per residential unit, \$26.49 per retail square foot, and \$42.52 per office square foot; no hotel rooms were included in the 2014 development scenario. Each fee category increase is tied directly to the associated cost increase attributable to that category of land use, as shown in Table 1 of the EPS Memorandum. For residential developments, where the increase in land values for parkland acquisition are a significant factor, the proposed \$40,487 per-unit fee is an increase of 23.5 percent, matching the 23.5 percent increase in costs attributable to residential impacts on infrastructure.

While the above fee increases are authorized by the Municipal Code and necessary to cover the costs of planned infrastructure, some developers have commented that this fee increase could have significant implications for the feasibility of their projects, especially pipeline projects that have already obtained entitlements but have yet to submit for or obtain building permits. While some of the developers' financial analyses and project pro-formas may have assumed the current TADIF, staff does not recommend reducing these fees from the amounts calculated by EPS as this would reduce the likelihood of covering infrastructure costs. However, to offset the impact on pipeline projects in the TASP and to incentivize construction of already approved projects, staff recommends that the City Council consider allowing a deferral of the payment of the TADIF until approval of occupancy instead of at building permit issuance, which is the current requirement. While fees would continue to be calculated at the time of permit issuance, allowing payment of these fees at occupancy can lessen the financial burden on development projects and assist with project financing and cash flow. The City would still collect the necessary funds for the BIP, but at a later date.

For example, a 100-unit project could have an impact fee obligation that increases 23.5 percent from just over \$3 million to just over \$4 million. The developer would lock in the fees at the time of issuance of permits by entering into a binding agreement at that time to pay the fees at some later agreed upon stage of occupancy (e.g., final inspection, temporary occupancy, 1<sup>st</sup> phase occupancy, or other) that could accommodate their financial constraints, such as allowing the fees to be covered by permanent financing as opposed to construction financing. The deferred payment agreement assures the City receives the fees to cover the costs of land acquisition and various infrastructure projects that benefit the development, while the developer locks in the actual fee amounts to guard against further increases and to perhaps financially separate that fee from other variables, such as rising construction costs. Staff would negotiate when the TADIF must be paid in the occupancy process.

If the City Council supports the deferred payment of the TADIF, staff recommends allowing the fee deferral for the pipeline projects listed in Exhibit B to the fee Resolution (i.e. projects that have already received Planning entitlements). Further, staff recommends setting the deferred payment provision to expire twelve (12) months after the effective date of the fee increase. Since the effective date is sixty (60) days after adoption, if the City Council adopts the fee increase that goes into effect in December 2019, the fee deferral period would expire in December 2020. Pipeline projects must have filed a complete building permit application with the City before the expiration date to qualify for the fee deferral. For applications submitted after this date, payment of the TADIF would once again be required at building permit issuance. This provision would not affect the timing for payment of any other fees.

### **Policy Alternatives:**

#### **Alternative 1:**

Adopt the maximum allowable fee in accordance with EPS Technical Memorandum and as recommended by staff and require all developers within the TASP to pay the increased TADIF prior to issuance of a building permit, which is the current requirement.

Pros: The increased fees will maximize cost recovery to fund the BIP, recognizing that projects that may receive a building permit before the effective date of the fee increase (60 days after adoption) would still pay the lower fee.

Cons: An increase in fees along with earlier payment at building permit issuance can affect the financial feasibility of approved projects and discourage interest in future development. A sudden and sharp increase in development fees for pipeline projects without buildings permits could cause delays, postponement, or cancellation of projects.

#### **Alternative 2:**

Do not increase the TADIF in accordance with the EPS Technical Memorandum and adopt a lower fee or maintain the current 2014 fees.

Pros: Development projects would proceed based on a lesser or the current TADIF and the financial feasibility of TASP pipeline projects would be minimally or less affected.

Cons: Maintaining the current TADIF or reducing the fee from the maximum allowed would result in the City collecting less funds than are required for the BIP. The City would incur a financial deficit and additional sources of funds would have to be identified to make up for the shortfall. Some developers may not pay their proportional share of necessary public improvements that will benefit their projects. Potentially higher per-unit fees would be allocated to future projects with any subsequent fee update to compensate for lower cost recovery in this current cycle.

### **Fiscal Impact:**

The increased TADIF would improve cost recovery and increase the amount of funds that are available to fund the BIP, which consists of roadway, sewer and water system infrastructure improvements and parks and community facilities to serve existing and future residents and businesses in the TASP area. The EPS analysis indicates that the recommended TADIF increase could generate up to \$53,179,818 in additional funds for the BIP depending on the amount and types of actual projects that will eventually be built.

**California Environmental Quality Act (CEQA):**

The action being considered is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15273 insofar as establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment.

**Recommendations:**

- 1) Conduct a public hearing and move to close the hearing following comments.
- 2) Consider the exemption in accordance with CEQA.
- 3) Adopt a Resolution authorizing the City Manager to update the Transit Area Development Impact Fees (TADIF) based on cost estimates for infrastructure items listed in the TASP Basic Infrastructure Program (BIP), and to allow the deferral of TADIF payment until approval of occupancy for those projects listed in Exhibit B of the Resolution, with the deferred payment provision to expire twelve (12) months after the effective date of the fee increase.

**Attachments:**

Resolution

Exhibit A to Resolution: EPS Technical Memo dated May 20, 2019

Exhibit B to Resolution: List of Pipeline Projects in TASP