



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: November 19, 2024

Subject

Mitigation Fee Act – the Annual & Five-Year Report for Fiscal Year (FY) 2023-2024.

Recommended Action

Adopt Resolution No. 24-xxxx entitled “A Resolution of the City of Cupertino City Council approving the Annual and Five-Year Mitigation Fee Report for Fiscal Year ending June 30, 2024, and making required findings” to:

- 1) Make the required findings; and
- 2) Approve the Annual & Five-Year Mitigation Fee Report for the Fiscal Year ending June 30, 2024, as required by Government Code Section 66000 *et seq.*

Reasons for Recommendation

Background

This action is an annual requirement established by state law for cities that collect mitigation fees. The Mitigation Fee Act (Government Code Section 66000 *et seq.*) requires public agencies to account for and make findings when imposing mitigation fees as a condition of development approval. Government Code Section 66006(b) also requires that public agencies annually review and make available to the public a report accounting for mitigation fees held by the agency. Additional reporting is required at least every five years pursuant to Government Code Section 66001(d).

There are several mitigation fees that the City of Cupertino has required as a condition of development approval in lieu of requiring construction of certain public improvements. These fees are subject to annual and five-year reporting requirements. Mitigation fees are based on a development’s fair share of a larger public improvement project. This reporting excludes fees that are not subject to reporting requirements under Government Code Section 66000 *et seq.*, except for parkland dedication fees which are subject to the Quimby Act and not the Mitigation Fee Act. The City reports on parkland dedication fees to provide further transparency on funds collected. Furthermore, although the master storm drain fee has been considered a maintenance fee in prior years, the City Attorney’s Office suggested the fee be included in the report to provide further transparency on funds collected. The City has also included reporting on the art in-lieu fees. Generally, art in-lieu fees are imposed under the City’s police power to

regulate development and are not considered impact fees for purposes of the Mitigation Fee Act. However, the City has included reporting on the art in-lieu fees to provide consistency and clarity.

Pursuant to Section 66006(b), the City is required to make available to the public the following information concerning mitigation fees each fiscal year:

- A brief description of the type of fee in the account or fund.
- Amount of the fee.
- Beginning and ending balances of the account or fund.
- The amount of fees collected, and interest earned.
- Identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with in-lieu fees.
- Identification of an approximate date by which the construction of the public improvement will commence, if the local agency determines that sufficient funds have been collected to complete the public improvement and the public improvement remains incomplete.
- A description of each inter-fund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended. In the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.
- The amount of any refunds made pursuant to Government Code section 66001(e) and any allocations made pursuant to Government Code section 66001(f).

Under Section 66001(d), the City also must make certain findings regarding unfinished improvements every five years following the first deposit of mitigation fees into a fund. The City must identify the purpose for which the fee was expended and demonstrate a reasonable relationship between the fee and the purpose for which it was used. The City also must identify all sources and amounts of funding anticipated to complete the financing of incomplete improvements and to designate approximate dates when this funding is expected to be deposited into the account. Fees received through a development agreement are exempt from the five-year report.

FY 2023-24 Report

The attached report includes the annual report for the fiscal year ending June 30, 2024, and a five-year report for all fees. Since the City provided a five-year report last fiscal year, a new five-year report is not required. However, because the five-year report provides additional detail, the City annually provides such data to better inform the public.

The following provides a brief overview of the updates made to this year's report:

- All projects have been updated to reflect FY 2023-24 information.

- Art In-Lieu Fee: All funds were transferred in FY 2023-24 for the artwork related to the Jollyman All-Inclusive Playground Project. The project has not been removed from this report to ensure art in-lieu funds collected in the future are included in ongoing reporting.
- Parkland In-Lieu Fee: Expenditures from FY 21-22 and FY 22-23 (for Lawrence-Mitty Park and Memorial Park Pond Repurposing) were not captured in the FY 22-23 annual report. Those expenditures have been shown this year to reconcile the balances.

The Mitigation Fee Act stipulates a 15-day public review period for the annual report. The FY 2023-24 annual report was made available to the public on the City's webpage (<https://www.cupertino.org/our-city/departments/finance/budget-reports>) on October 18, 2024. A public hearing is not required for this item; therefore, no additional noticing in advance of the Council meeting is required.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Not applicable. Accepting the Annual and Five-Year Reports does not have any impact on the city's budget.

City Work Program (CWP) Item: No

CWP Item Description: N/A

Council Goal: N/A

California Environmental Quality Act

Not applicable.

Prepared by: Jennifer Chu, Senior Civil Engineer

Reviewed by: Chad Mosley, Director of Public Works

Reviewed by: Tina Kapoor, Interim Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Annual & Five-Year Report for FY 2024

B – Draft Resolution