



## PUBLIC WORKS DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333  
CUPERTINO.ORG

### CITY COUNCIL STAFF REPORT

Meeting: November 21, 2023

#### Subject

Mitigation Fee Act – the Annual & Five-Year Report for Fiscal Year (FY) 2022-2023.

#### Recommended Action

Adopt Resolution No. 23-\_\_\_\_ entitled “A Resolution of the City of Cupertino City Council approving the Annual & Five-Year Mitigation Fee Report for Fiscal Year ending June 30, 2023, 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, 2023, as required by Government Code Section 66000 *et seq.*

#### Reasons for Recommendation

##### *Background*

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 does not include fees that are not subject to reporting requirements under Government Code Section 66000 *et seq.*, except for parkland dedication fees that 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.

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 agency 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 agency 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 2022-23 Report*

The attached report includes the annual report for the fiscal year ending June 30, 2023, 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:

- Interstate 280/Junipero Serra Channel Trail Improvements (renamed to Tamien Innu): The project was removed from this report as all funds were expended in FY 2022-23 and used towards design services for the project.
- All projects have been updated to reflect FY 2022-23 information.
- The master storm drain fees and art in-lieu fees have been included in the report.

#### *Questions from the FY 2022 Report*

At the December 20, 2022 meeting, Councilmember Moore had questions pertaining to the report and requested a subcommittee to be formed to examine the matter. In January 2023, all council subcommittees were dissolved, including the mitigation fee act review subcommittee. In an effort to provide follow up responses to Councilmember Moore's questions, staff included both question and staff's response (shown in *italics*) below.

- Why are the master storm drain fees not included in the report?  
*Staff's response: The master storm drain fee was considered a maintenance fee in prior years. The City Attorney's office suggested the fee to be included in the report. The master storm drain fees have been included in the FY 2022-23 report, and will be included moving forward, to provide further transparency on funds collected. In addition to the master storm drain fees, the City has included reporting on the art in-lieu fees to provide consistency and clarity.*
  
- When do other cities take this item to their City Council?  
*Staff's response: In researching some of the neighboring cities, the following indicates when the city took their FY 2021-22 report to their City Council:*
  - City of Mountain View: December 6, 2022
  - City of Sunnyvale: December 13, 2022
  - City of San Jose: December 13, 2022
  - City of Saratoga: December 21, 2022
  - City of Palo Alto: January 23, 2023
  - City of Santa Clara: January 31, 2023

*As of October 24, 2023, the cities mentioned above have not yet taken their FY 2022-23 report to their City Council.*

- Where do we post the reports online?  
*Staff's response: The annual reports, including the FY 2022-23 report, are posted at the link below.*  
<https://www.cupertino.org/our-city/departments/finance/budget-reports>
  
- What are the noticing requirements?  
*Staff's response: The Mitigation Fee Act stipulates a 15-day public review period for the annual report. The FY 2022-23 annual report was made available to the public on the City's webpage on October 23, 2023. A public hearing is not required for this item; therefore, no additional noticing in advance of the Council meeting is required.*

#### *Questions Prior to the November 7, 2023 Council Meeting*

Staff received additional questions regarding the FY 2022-23 report prior to the November 7, City Council meeting. This item was postponed from November 7, to the November 21,

City Council meeting. These questions and staff's responses (shown in *italics*) are provided below.

- Traffic Impact is Special Revenue Fund 272 which had a June 30, 2023 ending balance of \$776,311 which does not match the \$802,090 shown in Attachment A page 7. What accounts for this difference?

There is an estimated cost of \$59,780,125 for projects in the Transportation Impact Fee Nexus Study. What are these projects?

*Staff's response: Two points of clarification, first the City doesn't have a fund 272. This response assumes you are referring to fund 271 Traffic Impact. In addition, the \$776,311 is not the June 30, 2023, ending cash balance but the September 2023 ending cash balance. The variance is primarily due to mark-to-market adjustments, a paper loss/gain generated through the sale of a security; for this reason, they are not included in the balance for the mitigation report as the adjustments are never realized.*

*The Transportation Fee Nexus Study can be found on the City's website below. Please refer to Appendix A for the project list.*

<https://www.cupertino.org/home/showpublisheddocument/16824/636462621556300000>

- Page 2 of the Report shows our BMR RHNA total of 356 VLI, 207 LI, and 231 MI for a total of \$160.3 M. Our 2023-2031 allocation is:

Very Low Income	1,193 x \$241k/unit =	\$287,513,000
Low Income	687 x \$213k/unit =	\$146,331,000
Moderate Income	755 x \$123k/unit =	<u>\$92,865,000</u>
Total using the City estimated costs:		\$526,709,000

How were the costs per unit derived?

Would the city please show the new RHNA numbers we need to meet to improve the transparency of the report?

*Staff's response: The costs per unit were derived from the Residential Below Market Rate Housing Nexus Analysis which can be found here:*

<https://www.cupertino.org/home/showpublisheddocument/16828/636463473592570000>.

*The 2023-31 RHNA numbers are as follows: 1,193 very low-income units, 687 low-income units, 755 moderate-income units, and 1,953 above moderate-income units.*

- This year the June 30, 2023 ending fund balance for Special Revenue Fund 280 Park Dedication is \$18,706,898 and does not match the \$7,984,137 fund balance shown on page 5 of the report.

How is the \$11M discrepancy accounted for? What projects are the \$11M going towards? Should they be added in the report?

This item has the opposite problem of Traffic Impact, there are unknown projects with a high cost shown and insufficient funds, but it is fairly consistent with the June 30, 2023 balance provided to the public, but for the Park fee, there continues to be a much greater balance shown to the public in the June 30, 2023 fund balance report than the Development Impact fee report shows, which is a repeat of last year, and part of why I wanted the subcommittee formed, to work on understanding this issue and see if it is a discrepancy or not.

*Staff's response: As noted by the "\*\*\*\*" in the Annual Report section on Page 5, the balance reflects the unreserved funds. The reserved funds account for the \$11M discrepancy, which include the purchase and construction of Lawrence-Mitty Park and the Memorial Park Pond Repurposing Project.*

- May we know how much is in the liability account since these are items which will need to be funded?

*Staff's response: There is an accounts payable (liability) for about \$81,000 for fiscal year 2023 for retention and vendor payments for the memorial park project and Lawrence Mitty Park and Trail Masterplan. The remaining variance reflects unreserved funds.*

- Thank you, this (3 accounts) is a little confusing as was seen regarding the SCB emergency 54" pipe repair as to which account should be paying and I know Staff is working on resolving which account should pay, and that the SCB drain will come back to council with an update as to which account is being debited.

*Staff's response: Comment acknowledged.*

- Are Art in-lieu of fees or the public art program requirements considered Development Impact Fees? Should either of these amounts, particularly the in-lieu of fees, be included in this report? There may be some new guidance on this?

*Staff's response: Generally, art in-lieu fees are considered to be 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.*

#### Sustainability Impact

No sustainability impact.

#### Fiscal Impact

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

#### California Environmental Quality Act

Not applicable.

---

Prepared by: Jennifer Chu, Senior Civil Engineer

Reviewed by: Chad Mosley, Director of Public Works

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Annual & Five-Year Report for FY 2023

B – Draft Resolution