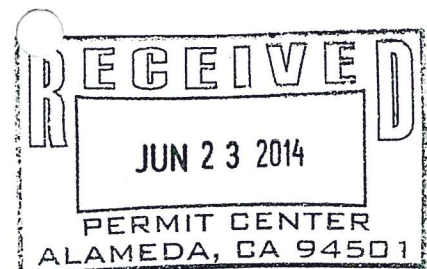


Alameda

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June 19, 2014

The Honorable Marie Gilmore
Mayor, City of Alameda
2263 Santa Clara Avenue
Alameda, California 94501

Dear Mayor Gilmore,

The Alameda Chamber of Commerce has been involved in the process for the Development Impact Fee, including participating in the City's public meeting and discussing the issue at our Government Relations/Economic Development Committee.

The Chamber supports the City as it seeks to update its development impact fee structure to adequately meet the public facilities needs, including public safety, generated by new development. The Chamber supports a fee structure that is both reasonable and competitive within the region. Therefore, we urge you to establish fees that are at, or below, the average of fees charged by surrounding jurisdictions to ensure that the City of Alameda retains its competitive economic advantage.

Should you have any questions, please contact the Chamber at 522-0414.

Sincerely,

Mark Sorensen
Executive Director

Cc: Council Members
John Russo, City Manager
Debbie Potter, Community Development Director

Alameda Chamber of Commerce

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6-B
Staff Submission
07-01-2014



DATE: June 30, 2014

TO: Alameda Mayor Marie Gilmore, Vice Mayor Marilyn Ezzy Ashcraft, Councilmembers Lena Tam, Dr. Stewart Go Chen and Tony Daysog, and City Manager John Russo

RE: Agenda Item 6.B on the July 1, 2014, Alameda City Council agenda: Consider Updating the City's Development Impact Fees

FROM: Building Industry Association of the Bay Area

Dear Mayor Gilmore, City Council members and City Manager Russo,

BIA|Bay Area respectfully requests a continuance of Item 6-B, the proposed development impact fee ordinance listed on your agenda of July 1, 2014. We need additional time to engage an expert to analyze the fee nexus study, meet with staff and discuss ways the city could mitigate the impacts such as phased-in hikes and grandfathering of existing projects in the pipeline. We would also encourage the City Council to schedule a study session on the subject.

Making such requests and raising major issues about a proposed ordinance for the first time before the City Council is not BIA's preferred approach nor is it our common practice but the complete lack of opportunity for BIA to participate in any meaningful way has forced us to do so.

While our members fully understand the city needs additional revenues to fund public infrastructure and in no way intends to object to a justified increase, the process has been extraordinarily rushed. The draft ordinance, proposed fee schedule and nexus study were made public less than two weeks ago. The city held an outreach meeting on May 21, but BIA|Bay Area was not notified and we have been told less than a half dozen people attended. This is contrary to the Item 6-B staff report, which significantly overstates the city's outreach efforts.

To adopt development impact fee increases of more than 300 percent in less than 90 days without substantive input from the homebuilding community is virtually unprecedented and could well jeopardize housing proposals in Alameda that have been in the planning process for years and stall the city's economic progress.

Most communities undertake fee increases of this nature at a far more moderate pace. For example, Emeryville's City Council has also set a July 1 hearing date to vote on increases in its parks and transportation fees. But the vote comes after nearly two years of discussions with the community. Its outreach included two study sessions, three committee meetings and a Planning Commission hearing.

The BIA would very much like to work with Alameda and help craft an impact fee ordinance that enhances the community's amenities while recognizing the realities of homebuilding in one of the nation's most expensive real estate markets. To that end, we have a number of initial questions and observations about the fee nexus study and the proposed ordinance:

- We have seen no legitimate reason why the City cannot proceed on separate tracks with its Alameda Point infrastructure ordinance and the citywide development fee program. Insisting on moving the two items together creates the appearance that the City may plan to use fees collected throughout the rest of the City on police, park and other facilities

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that serve Alameda Point. How will the City demonstrate that fees collected outside Alameda Point won't be spent or loaned to cover facilities there?

- The future development figures (number of new units through 2040) are based on Plan Bay Area. Typically, growth estimates are based on a city's own General Plan in conjunction with its long-range capital improvement or facilities plans. Does the city intend to change its General Plan and local zoning to conform with the higher densities recommended in Plan Bay Area?
- The fee nexus study projects 4,600 new units will be built by 2040, of which more than half will be single-family detached units. The ratio is based on the existing housing stock balance in Alameda. But our members tell us that Alameda staff repeatedly express little or no interest in projects that contain single-family detached housing, where the average household size is larger than that of a multi-family residence. If the consultant's projection is incorrect and overstates the number of single family homes, the financial analysis may be flawed.
- The nexus study acknowledges that the many of the parks, roads and other public facilities the city needs will require funding far beyond what new development will generate. Does the City have any realistic plans for funding the remaining facilities? Did the city secure non-development funds for the projects identified in the last fee nexus study? If not, new development funded 100 percent of those improvements -- far more than its fair share -- and the new ordinance will perpetuate the practice.
- Alameda is updating its housing element and as part of that process, the state requires cities to conduct a comprehensive analysis of the cumulative fee burden and demonstrate that fees will not constrain housing production. Has Alameda completed this analysis based on the proposed new fees and if so, what were the conclusions? (Please find attached a copy of a letter sent from the Bay Area Business Coalition, of which the BIA is member, to Alameda and other cities and counties that outlines the housing element update issues in detail.)
- The park fee proposal lacks a provision that allows developers to receive financial credit for private park facilities provided in the development. The vast majority of jurisdictions allow at least a 50 percent credit, which eases one of the identified constraints on housing production.
- Why is the City proposing to lump all the different fee types into a single fee and deposit into a single account? The more common and better practice is to adopt separate freestanding fees for each type (parks, transportation, etc.) and keep them in segregated accounts. This promotes transparency and accountability. Otherwise, what is to keep the city from spending general facilities fees on parks or vice versa?
- Staff is proposing major changes to the city's existing ordinance provisions for providing credits for developer-provided improvements. Again, this issue needs to be fully vetted and discussed with the development community. Many of the development plans envision the developer providing the facilities and then seeking a credit.
- We also question the staff proposal to restrict the builders' ability to obtain a refund of fees paid when a building permit lapses or is withdrawn. The proposed ordinance purports to eliminate the right of a refund if the City has "committed" the fee revenue, even if no construction is undertaken pursuant to the permit and it is withdrawn. This is improper because local governments consider fees "committed" almost immediately

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- when they are collected. "Committed" is a local government term that does not carry the meaning that the word would imply, i.e., the fee revenue has actually been pledged under contract to a specific public improvement. "Committed" simply means that the City has identified an improvement or set of improvements for which the fee will fund. If a building permit lapses or is withdrawn, the impact fees paid should be refunded unconditionally because there is no lawful basis to retain a fee when there is no impact.
- It is virtually unprecedented to adopt such a significant percentage increase in existing fees without a substantial phase-in period. It is also common practice for cities to allow projects that have complete application on file to be grandfathered under the current fee load even if they do not have a development agreement or Vesting Tentative Map.
- The City should provide more detail on the nature of the park facilities it intends to fund with the park impact fee in order to show compliance with the Court of Appeal decision in Homebuilders Association of Tulare/Kings County v. City of Lemoore (2010) 185 Cal.App.4th, 554. While the Tulare decision does allow park fees to be adopted pursuant to the Mitigation Fee Act, and that the Quimby Act does not provide the exclusive mechanism for adopting park impact fees, the decision also suggests that park fees adopted pursuant to the MFA can only be used to fund "unique facilities intended to service the entire population of the City." It is unclear from the nexus study whether the list of park facilities is in fact limited to that type of facility, and that it does not include neighborhood/community parks primarily intended to serve the subdivision paying the fee and its residents. If such facilities are to be funded, the nexus study and park fee proposal should be reconsidered and modified.
- The staff report and nexus study have failed to consider the important provisions of the Mitigation Fee Act that provide incentives for transit-oriented development. Gov't Code 66005.1 requires a City to impose a lower transportation impact fee for TOD projects that meet the statute's requirements unless the City adopts certain findings after a public hearing. The agenda for Tuesday's meeting and the staff report provide no discussion of 66005.1 and it would be inappropriate to move forward with adopting the fee level and for the City to plan on these revenue assumptions before considering what projects, if any, are likely to qualify under the statute and how the City intends to implement this state statute when the time comes to impose the transportation fee.

Again, BIA|Bay Area and its members would very much like the opportunity to discuss the fee nexus study further with staff and the City Council after we have had the opportunity to commission a peer review of the city's analysis.

Thank you for your consideration and we look forward to working collaboratively with the City of Alameda.

Sincerely yours,

A handwritten signature in black ink, reading 'Lisa A. Vorderbrueggen'.

Lisa A. Vorderbrueggen
Executive Director for Governmental Affairs, Eastern Division
BIA|Bay Area

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cc: Bob Glover, CEO, BIA|Bay Area
Paul Campos, General Counsel and Senior Vice President, BIA|Bay Area



City of Alameda, California

July 1, 2014

Lisa A. Vorderbrueggen
Executive Director for Governmental Affairs, Eastern Division
Building Industry Association of the Bay Area
1350 Treat Blvd, Suite 140
Walnut Creek, CA 94597

Via Electronic Mail (lvorderbrueggen@biabayarea.org)

Dear Ms. Vorderbrueggen,

Thank you for your letter dated June 30, 2014.

Please find below the City's response to each of the BIA's questions or observations.

BIA: We have seen no legitimate reason why the City cannot proceed on separate tracks with its Alameda Point infrastructure ordinance and the citywide development fee program. Insisting on moving the two items together creates the appearance that the City may plan to use fees collected throughout the rest of the City on police, park and other facilities that serve Alameda Point. How will the City demonstrate that fees collected outside Alameda Point won't be spent or loaned to cover facilities there?

City: Fees raised in Alameda Point will only fund facilities supporting development in Alameda Point, and fees raised in the rest of the City will only fund facilities that support new development in the rest of the City. The City will monitor and report all uses of fee revenue to ensure compliance with the City's ordinance, Mitigation Fee Act findings, and the City's fiscal neutrality policy regarding Alameda Point. Alameda Point fees will be kept in a separate account and expended only on projects in the City's adopted Master Infrastructure Program for Alameda Point. Fees collected in the rest of the City will be spent only on projects from the Citywide project list. There are a small number of projects where fee revenue from Alameda Point and the rest of the City will support the same capital facility (e.g., Alameda Point Ferry Terminal, Alameda Point Sports complex, and a few transportation projects) because these facilities are required to meet demand from new development in both areas.



City of Alameda, California

BIA: The future development figures (number of new units through 2040) are based on Plan Bay Area. Typically, growth estimates are based on a city's own General Plan in conjunction with its long-range capital improvement or facilities plans. Does the city intend to change its General Plan and local zoning to conform with the higher densities recommended in Plan Bay Area?

BIA: The fee nexus study projects 4,600 new units will be built by 2040, of which more than half will be single-family detached units. The ratio is based on the existing housing stock balance in Alameda. But our members tell us that Alameda staff repeatedly express little or no interest in projects that contain single-family detached housing, where the average household size is larger than that of a multi-family residence. If the consultant's projection is incorrect and overstates the number of single family homes, the financial analysis may be flawed.

City: The development projections in the nexus study are based on multiple sources, not just Plan Bay Area, and were vetted and adjusted by our Community Development Director and City Planner to ensure reasonableness. It should be understood that the "single family" designation includes "attached single family" or "town homes" which are being proposed by a number of the current projects and have been approved by the City. The Mitigation Fee Act requires only that the assumptions in the projections be reasonable, nothing more.

BIA: The nexus study acknowledges that the many of the parks, roads and other public facilities the city needs will require funding far beyond what new development will generate. Does the City have any realistic plans for funding the remaining facilities? Did the city secure non-development funds for the projects identified in the last fee nexus study? If not, new development funded 100 percent of those improvements -- far more than its fair share -- and the new ordinance will perpetuate the practice.

City: The Nexus Study ensures that new development pays only its fair share of the capital facilities needed to support new development. The City continues to pursue realistic plans to gain the non-DIF funding for these facilities. For example, the EOC and Fire Station #3 have or soon will have non-DIF funding, including proceeds from refinanced bonds and General Fund contributions. If voters approve the next Measure B in the fall, the Fruitvale Bridge project will have funding. For other transportation projects, the City will seek and gain federal and state funding. For parks, the City has approved conceptual designs for the Jean Sweeney Open Space Park and the Estuary Park, is actively soliciting state and regional grants, and has a proven history of securing grants, and private and corporate funding.



City of Alameda, California

BIA: Alameda is updating its housing element and as part of that process, the state requires cities to conduct a comprehensive analysis of the cumulative fee burden and demonstrate that fees will not constrain housing production. Has Alameda completed this analysis based on the proposed new fees and if so, what were the conclusions? (Please find attached a copy of a letter sent from the Bay Area Business Coalition, of which the BIA is member, to Alameda and other cities and counties that outlines the housing element update issues in detail.)

City: Yes, the City has completed its analysis. The City of Alameda Housing Element update and the Development Impact Fee update have been carefully coordinated by the City of Alameda staff. The proposed development impact fees are comparable to those fees imposed by the other cities in the region. Therefore, the imposition of the new fees in Alameda will not represent a constraint on housing that is any different than similar constraints in the region. Secondly, an important purpose of the update is to eliminate or minimize the need to negotiate public facility impacts on a case by case basis for each project. By establishing a set fee, the project review and entitlement process will be more certain for developers and more streamlined. Finally, the imposition of the new fees enable developers to respond to housing project opponents who claim that new housing projects impose an unfair burden on the existing residents and the existing public facilities. For these primary reasons, the City staff does not believe that the new development impact fees represent a new constraint on housing in Alameda.

BIA: The park fee proposal lacks a provision that allows developers to receive financial credit for private park facilities provided in the development. The vast majority of jurisdictions allow at least a 50 percent credit, which eases one of the identified constraints on housing production.

City: The City offers and will continue to offer credits for public parks. While the City is not required to allow credit for private park facilities, staff are certainly open to doing so on a case-by-case basis. In those instances, we will work with developers to determine an appropriate credit for these facilities.

BIA: Why is the City proposing to lump all the different fee types into a single fee and deposit into a single account? The more common and better practice is to adopt separate freestanding fees for each type (parks, transportation, etc.) and keep them in segregated accounts. This promotes transparency and accountability. Otherwise, what is to keep the city from spending general facilities fees on parks or vice versa?



City of Alameda, California

City: The Mitigation Fee Act requires only that a separate fund be set up for each fee collected. The City of Alameda plans on collecting a single development impact fee, which consists of several components. The City's finance department will track revenues and expenditures and ensure that funds are expended appropriately, and report on the revenues and expenditures of impact fees in its required annual public report.

BIA: Staff is proposing major changes to the city's existing ordinance provisions for providing credits for developer-provided improvements. Again, this issue needs to be fully vetted and discussed with the development community. Many of the development plans envision the developer providing the facilities and then seeking a credit.

City: Staff's proposed changes for permitting credits will make it easier and clearer for developers to obtain credits for constructing public facilities, not harder. Moreover, these credits are elective. If developers want a credit, the process for gaining them will be clearer than it was before. If they don't want a credit, it won't affect them.

BIA: We also question the staff proposal to restrict the builders' ability to obtain a refund of fees paid when a building permit lapses or is withdrawn. The proposed ordinance purports to eliminate the right of a refund if the City has "committed" the fee revenue, even if no construction is undertaken pursuant to the permit and it is withdrawn. This is improper because local governments consider fees "committed" almost immediately when they are collected. "Committed" is a local government term that does not carry the meaning that the word would imply, i.e., the fee revenue has actually been pledged under contract to a specific public improvement. "Committed" simply means that the City has identified an improvement or set of improvements for which the fee will fund. If a building permit lapses or is withdrawn, the impact fees paid should be refunded unconditionally because there is no lawful basis to retain a fee when there is no impact.

City: The ordinance makes clear that the Public Works Director and Finance Director determine what "committed" means. Both Directors agree committed means the fee revenue has actually been pledged under contract to a specific public improvement.

BIA: It is virtually unprecedented to adopt such a significant percentage increase in existing fees without a substantial phase-in period. It is also common practice for cities to allow projects that



City of Alameda, California

have complete application on file to be grandfathered under the current fee load even if they do not have a development agreement or Vesting Tentative Map.

City: There is nothing unprecedented about following, and even exceeding, the requirements laid out by state law to set these fees. For these fees, staff held a public meeting, presented to the Chamber of Commerce and Board of Realtors, are holding a public hearing, and the fees will take effect another 60 days after the final reading of the ordinance. Nor is there anything unprecedented about the fee amounts. Staff's proposal seeks merely to bring the City's development impact fees to the averages of nearby cities.

Phasing in these fees will result in new development not paying its fair share of public facilities needed to support the new development. Without new development's fair share, the City is left with a difficult choice. If it fails to construct the needed capital facilities, then the City--and its existing residents--suffer a decline in the City's overall service level, e.g., fewer parks per resident. Or it can charge existing residents in order to raise funds for facilities that would be required as a result of new development. Given residential homebuilding in Alameda County is experiencing steep growth in home values, this is the right time to ensure new development pays its fair share of capital facilities that support new development.

BIA: The City should provide more detail on the nature of the park facilities it intends to fund with the park impact fee in order to show compliance with the Court of Appeal decision in *Homebuilders Association of Tulare/Kings County v. City of Lemoore* (2010) 185 Cal.App.4th, 554. While the Tulare decision does allow park fees to be adopted pursuant to the Mitigation Fee Act, and that the Quimby Act does not provide the exclusive mechanism for adopting park impact fees, the decision also suggests that park fees adopted pursuant to the MFA can only be used to fund "unique facilities intended to service the entire population of the City." It is unclear from the nexus study whether the list of park facilities is in fact limited to that type of facility, and that it does not include neighborhood/community parks primarily intended to serve the subdivision paying the fee and its residents. If such facilities are to be funded, the nexus study and park fee proposal should be reconsidered and modified.

City: Through development impact fees, the City seeks to ensure the parks grow as the City's number of residents grow. The Nexus Study provides sufficient detail of the park facilities that will be funded with the park impact fee.



City of Alameda, California

The case of Homebuilders Association of Tulare/Kings County v. City of Lemoore (2010) 185 Cal.App.4th 554, does not hold that park impact fees cannot be imposed for neighborhood parks. Rather, it holds that park impact fees and fees or dedications under the Quimby Act cannot require payment twice for the same park facility. In Homebuilders Association of Tulare/Kings County v. City of Lemoore the city avoided this problem by imposing park impact fees only for city-wide facilities and not for neighborhood parks. However, because the City of Alameda does not impose Quimby Act fees or dedications, this is not an issue for Alameda.

BIA: The staff report and nexus study have failed to consider the important provisions of the Mitigation Fee Act that provide incentives for transit-oriented development. Gov't Code 66005.1 requires a City to impose a lower transportation impact fee for TOD projects that meet the statute's requirements unless the City adopts certain findings after a public hearing. The agenda for Tuesday's meeting and the staff report provide no discussion of 66005.1 and it would be inappropriate to move forward with adopting the fee level and for the City to plan on these revenue assumptions before considering what projects, if any, are likely to be qualify under the statute and how the City intends to implement this state statute when the time comes to impose the transportation fee.

City: The City will apply Government Code section 66005.1 on a case-by-case basis to any qualifying Transit-Oriented Development (TOD) projects that are proposed in the City. Pursuant to section 66005.1, the City will consider appropriately reducing the transportation impact fee for any TOD project that meets the requirements of this section.

Again, we appreciate your input into the process of setting the City's development impact fees. If you have any further questions, please do not hesitate to contact me.

Best,

/s/

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