

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # \*B-2

Urgent  Routine

AGENDA DATE March 18, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Adopt a Resolution to Modify the Existing Public Facility Fee Installment Payment Program for Qualifying Non-Residential Business Expansion Projects

STAFF RECOMMENDATIONS:

Adopt a Resolution to Modify the Existing Public Facility Fee Installment Payment Program to Allow Qualifying Non-Residential Business Expansion Projects to Participate in the Program.

FISCAL IMPACT:

Current deferral incentive ordinance states that in lieu of paying public facility fees for a project, a non-residential developer whose successful development activity will create at minimum, 30 new jobs may elect to pay up to 80% of those fees in equal annual payments. The property owner/developer may enter into a Multi-Year PFF Payment Agreement with Stanislaus County to pay an initial amount of 20% of the total fee due at building permitting with the balance to be paid in equal annual payments. In no case shall the payment period exceed four years.

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BOARD ACTION AS FOLLOWS:

No. 2008-168

On motion of Supervisor Monteith, Seconded by Supervisor DeMartini

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

ATTEST:

Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No. M-64-H-6

## Approval to Adopt a Resolution to Modify the Existing Public Facility Fee Installment Payment Program for Qualifying Non-Residential Business Expansion Projects

### **FISCAL IMPACT Continued:**

In order to receive the Multi-Year PFF Payment deferral, a project must meet the definition of a qualified project and the developer must initiate the request for Multi-Year PFF Payment in writing at the time of initial project consultation with County Building Permit Division staff.

Any unpaid PFF will be immediately due and payable upon sale, transfer or reconveyance of the property, unless the reconveyance is solely related to the satisfaction of a construction loan. The Multi-Year PFF Payment Agreement will be subject to interest, collection, late payment and delinquency charges as stated in the agreement. Terms of default shall also be stated in the agreement. The interest rate will be equal to the Wall Street Journal Prime Rate (compounded annually) at the time the agreement is executed and shall be applicable until the balance is paid in full. A non-refundable application fee of \$350.00 (payable to Stanislaus County Building Permits Division) and an annual collection charge of \$150.00 (payable to Stanislaus County Auditor Controller) shall be paid to service the Agreement.

This ordinance revision would allow job creating business expansions to take advantage of this incentive also. Initially developed as a new business incentive, it is equally important to continuing economic viability to allow a similar job creation incentive to existing businesses that are growing and expanding their local and regional operations.

Consistent with the ordinance that is in place, this added business expansion scenario will allow the incentive to be utilized by all facets of the job creating business community.

### **DISCUSSION:**

The Stanislaus County Public Facility Fee program (PFF) was established in 1990 consistent with State legislation (AB1600) which set forth the parameters for local public entities to establish fee mechanisms to counter-balance development costs due to growth. The concept of installment payments over a fixed timeframe is not a new one. Multiple jurisdictions use this deferment feature as a cost/impact incentive offered to the development community. In Stanislaus County the cities of Modesto and Ceres offer a similar installment program.

The installment model modification being suggested further defines eligibility to include only non-residential development projects which will create at minimum 30 new jobs at time of occupancy (new business applicant) or a minimum of 30 jobs by fee installment four (4) (business expansion applicant). The definition of a new job for purposes of this program is consistent with the enterprise zone job definition - which is equal to 1.5 X minimum wage or approximately \$12.00 hourly. Full time is defined by a 36-hour workweek minimum. Eligible jobs must be new jobs - not relocated from another site/location within Stanislaus County.

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### **Qualified Projects - Standards Revised**

Qualified projects **MUST** meet all of the characteristics mentioned below:

- Project is of commercial and/or industrial nature.
- **Residential and Retail developments are not eligible for this fee deferral program.**
- New development must create at minimum 30 new jobs at time of occupancy.
- Existing development (project expansions) must create at minimum 30 new jobs by the fourth deferral payment due date.
- New Jobs to be listed with the Stanislaus County Workforce Alliance - WorkNET.
- Job verification is required and will be conducted by the Stanislaus County Workforce Alliance - WorkNET.
- The 30 new jobs shall be full-time (36 hours per week) positions.
- The 30 new jobs shall pay at least \$12.00 per hour.

### **Process Steps**

If a development project meets the qualified project standards (under either of the eligibility scenarios) and written request for Multi-Year PFF Payment has been received, the following process steps shall be followed:

1. The eligible developer/property owner will provide adequate security to protect the interests of the County of Stanislaus. The Building Permits Division of the Stanislaus County Department of Planning & Community Development will accept either of the following:
  - A promissory note and a Deed of Trust OR
  - An irrevocable letter of credit in an amount sufficient to secure both the principal and the interest of the total Public Facility Fee due for the duration of the deferral.
2. For non-property owners (tenant applicants), an irrevocable letter of credit in an amount sufficient to secure both the principal and the interest of the total Public Facility Fee due for the duration of the deferral is required.
3. Once the developer provides security, the County will prepare an agreement, promissory note, and Deed of Trust (see attached template) to defer the Public Facility Fee per the Multi-Year PFF Payment Program.

### **Collection Of Multi-Year PFF Payments**

Qualified Projects only:

- 20% of the total calculated fee will be paid at issuance of building permit.
- The remaining 80% will be paid in four (4) equal annual installments with total payment to be received not later than the fourth (4<sup>th</sup>) anniversary of the deferral agreement.
- County Building Permits Division collects the \$350.00 application fee, the initial 20% of total PFF fee calculated, accepts the signed Agreement, and records the Deed of Trust.
- All subsequent annual fee payments including the annual \$150 administration fee are made to the Auditor Controller's Office as stated in the fee Agreement.

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- The Stanislaus County Auditor-Controller may annually invoice the installment payment.
- In the event that a payment is not received within ninety days (90) of the due date, the full balance is immediately due and payable.
- Any balance owing on the agreement can be retired prior to the maturity date.
- Upon change of property ownership, the entire balance will become due and payable.

### Procedure

1. Begin at the Building Permits Division Counter at the time of initial development project consultation (new construction unincorporated/new project scenario) or receive written referral from City of project origin (to Public Facility Fee Committee - PFF) for expansion requests (expansion scenario).
2. Building Permits Division will calculate/determine the total public facility fee required of the project.
3. If the project proponent wishes to pursue applying for fee deferment, Building Permits Division will:
  - a. Determine appropriate project scenario (new project vs. expansion of existing project)
  - b. Provide information for the Multi-Year PFF Payment Program, which includes an application, a copy of a sample agreement, and application processing information.
  - c. Advise that an agreement for deferment will have to be executed with Building Permits Division before a building permit can be issued. Advise that a \$350.00 non-refundable application fee, a \$150.00 annual collection/administrative fee and an initial payment of 20% of total PFF fee calculation are due upon completion of the agreement.
  - d. Advise applicant that either a promissory note and a Deed of Trust will have to be executed or applicant must submit an irrevocable letter of credit with Stanislaus County before a building permit will be issued.
4. Upon receiving completed application and all fees, the Public Facilities Fee Committee will then determine if the developer qualifies under the qualified deferral program criteria (see above). The PFF Committee shall:
  - a. Prepare a Multi-Year PFF Payment Agreement package.
  - b. Direct the developer to have the contents of the Agreement package signed and notarized, and to return it along with the initial fees due to Building Permits Division. Building Permits Division will sign off fee approval of permit and issue a receipt for payment.
  - c. All documents (including initial fees) will be forwarded to the Director of Planning and Community Development or his designee for approval and processing

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- d. All documents to be recorded will be forwarded to Building Permits Division (for recording) with a copy forwarded to the developer.
- e. Building Permits Division will process all origination fees for deferment agreement and issue a building permit with receipt.
- f. Upon recording the Deed of Trust, the Auditor Controller will administer the Agreement for Multi-Year payments, default, etc.
- g. The Auditor Controller will prepare the documents necessary to reconvey the collateral documents upon complete repayment of the deferred amount.

It is important to reflect that this program is not intended as an automatic fee deferment. Fee deferments that are not requested at the inception of a project will not be eligible for retroactive consideration for this incentive.

**POLICY STATEMENT:**

The Board finds that the jobs created by non-residential development projects which may qualify for installment payments of Public Facility Fees substantially benefit the general health and welfare of the residents of the County of Stanislaus by providing needed employment opportunities for the residents of the County and also generally promote the economic development of the county, all of which are substantially beneficial to the interests of the County and its residents.

**STAFFING IMPACT:**

The Public Facility Fee Installment Payment Program is administered by existing staff in Building Permits Division (at application) and through the Auditor-Controller's office (on-going) for installment/payment tracking. There are no additional staffing impacts associated with this incentive.

## DEFERRED PUBLIC FACILITIES FEES AGREEMENT

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the County of Stanislaus, California, hereinafter referred to as "County," and \_\_\_\_\_, hereinafter referred to as Owner who is the owner of the property located at \_\_\_\_\_, California, hereinafter referred to as "Property."

This Agreement is made for the purpose of conditionally deferring Stanislaus County Public Facilities Fees (PFF) fees to provide an incentive for development, which creates new job opportunities in Stanislaus County.

### Deferred Conditions

County agrees to defer PFF in the amount of:

\_\_\_\_\_ dollars, (\$ \_\_\_\_\_) ("Deferred PFF") which would otherwise be due and payable to the County at the time a building permit is issued for the construction of a \_\_\_\_\_ on the property.

1. All deferred amounts shall bear interest.
2. Payment of the PFF shall be deferred for four (4) years so long as the Owner maintains ownership.
3. Any and all amounts of Deferred PFF shall become immediately due and payable at such time as title to the property is transferred.
4. The Owner may, with permission of the County, make advance payments to the County for the purpose of diminishing the Deferred PFF.

The Owner agrees to indemnify, defend, and save harmless the County, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Owner in the performance of this Agreement.

The Owner, and the contractors, subcontractors, agents and employees of the Owner, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the County.

Without the written consent of the County, this Agreement is not assignable by the Owner, either in whole or in part.

Time is of the essence with this Agreement.

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

**Security**

At the time of purchase/expansion, the Owner shall deliver to the County or its agent the following documents:

A duly executed and legally binding Promissory Note in the amount of PFF to be deferred. Such Promissory Note shall be payable to, and in form approved by, the County.

A duly executed, legally binding and recordable security over the property. Such security shall give the County the best available lien upon the property to protect the County's interests under this Agreement, shall be in a form approved by the County; shall require the Owner to maintain the property in a good state of repair, to insure the property; and to pay all taxes levied on the property.

**Termination for Default**

If the Owner fails to perform the covenants herein contained, and in the manner herein provided, the County may terminate this Agreement by written notice to the Owner.

**Termination by Either Party for Convenience**

Prior to the issuance of a building permit, either party may terminate this Agreement by giving 15 days prior written notice to the other.

**Reconveyance**

When the Promissory Note is paid in full, a Reconveyance will be executed and recorded by the County.

**Insurance**

The Owner shall maintain for the term of the Promissory Note fire insurance adequate to cover all encumbrances on the property. The County shall be designated as loss payee for the amount of the deferred PFF. A statement of loss payee shall be forwarded to the County and included in the Owner's file.

County acknowledges and agrees that its rights as a loss payee are junior to a construction loan.

In areas designated by FEMA as flood prone, the Owner is required to maintain flood insurance in an amount adequate to secure the deferred PFF. This policy must designate the County as loss payee.

\_\_\_\_\_  
, Owner

, Owner

\_\_\_\_\_  
Dean Wright, Chair  
Public Facilities Fees Committee  
Stanislaus County

**DO NOT DESTROY THIS NOTE:** When paid, this Note and the Deed of Trust must be surrendered to the \_\_\_\_\_ Title company with request for reconveyance.

**PROMISSORY NOTE**

**COUNTY OF STANISLAUS**, California, \_\_\_\_\_, 200\_.

**FOR VALUE RECEIVED**, \_\_\_\_\_ jointly and severally promises to pay the County of Stanislaus the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_). At no time will interest be charged.

Payment of the amount due under this Note is deferred while Trustor remains fee simple owner of the property described as: \_\_\_\_\_, California.

Transfer of ownership of the property shall constitute default, and the entire principal on the date of default will become immediately due and payable. Failure of the County to formally declare or act upon such default shall not constitute a waiver. Demand, protest and notice of demand and protest are hereby waived.

The undersigned reserve(s) the right to prepay at any time all or any part of the Note without the payment of penalties or premiums to the County of Stanislaus. Any and all payments on this Note shall be applied to the principal due on the Note.

The Trustor shall abide by all covenants contained in the Deferred Public Facilities Fees Agreement dated \_\_\_\_\_, \_\_\_\_\_. In the event of any inconsistencies between this Note and the Deferred Public Facilities Fees Agreement, the latter shall prevail.

Should suit be commenced to collect payments due under this Note or any portion thereof, the prevailing party shall be entitled to recover reasonable attorney's fees in addition to any other relief allowed by law. This Note is secured by a certain DEED OF TRUST to the \_\_\_\_\_ Title Company, a California Corporation, as TRUSTEE.

The restrictions will automatically terminate if title to the property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

IN WITNESS WHEREON the Note has been duly executed by the undersigned, as of this date.

\_\_\_\_\_  
, Trustor

\_\_\_\_\_  
, Trustor



**Recording Requested By:**

When Recorded Mail to:

Name: Dennis Wister, Chief Building Official  
Stanislaus County Planning Dept.

Mailing  
Address: 1010 10th Street, Suite 3400

City, State: Modesto, California  
Zip Code: 95354

SPACE ABOVE THIS LINE RESERVED  
FOR RECORDER'S USE ONLY

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**Short Form Deed of Trust**

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This document is recorded solely for the purpose of the County of Stanislaus without fee pursuant to Section 6103 of the Governmental Code.

**SHORT FORM DEED OF TRUST**

THIS DEED OF TRUST, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_ between \_\_\_\_\_ as TRUSTOR, whose address is \_\_\_\_\_, California; and \_\_\_\_\_ Title Company, Modesto, California, as TRUSTEE AND STANISLAUS COUNTY, as BENEFICIARY.

WITNESSETH: That Trustor grants, transfers or assigns to Trustee in Trust, that property in the \_\_\_\_\_, County of Stanislaus, State of California, described as:

If the Trustor shall sell, convey or alienate said property of any part thereof, or any interest therein, or shall be divested of this title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, immediately due and payable. The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

No fictitious Deed of Trust recorded.

FOR THE PURPOSE of security performance payment of the sum of

\_\_\_\_\_ dollars (\$\_\_\_\_\_) and of the monies that may be paid or advanced by or may otherwise be owing to the Trustee or the Beneficiary under this instrument, and also such additional monies as may be hereafter borrowed by the Trustor, or any of them, from the Beneficiary, and also the payment of all other monies and indebtedness now owing or to become owing, from the Trustor, or any of them, to the Beneficiary, according to the terms of the Promissory Note, payable to Beneficiary on order and made by Trustor.

Said Promissory Note of even date herewith made by Trustor, delineated the Terms and Conditions of the Loan requiring security of this document, but which is not subject to performance. Demand is subject to change of title by any means. Privilege is reserved to prepay at any time all or any part of the debt secured hereby without the payment of penalties or premiums.

**SIGNATURE OF TRUSTOR (S)**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE