

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

DEPT: Chief Executive Office

BOARD AGENDA # *B-10

Urgent Routine

AGENDA DATE December 18, 2012

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Adopt the Revised Public Facilities Fees (PFF) Administrative Guidelines and Revisions to the Deferral Payment Contract

STAFF RECOMMENDATIONS:

1. Adopt the revisions to the Public Facilities Fees (PFF) Administrative Guidelines.
2. Approve the revisions to the contract to pay Stanislaus County Public Facilities Fees (Attachment B).

FISCAL IMPACT:

Since adoption of the program in March 1990, Stanislaus County has collected nearly \$168 million in Public Facilities Fees (PFF) and over \$31 million in interest. Approximately \$127 million has been distributed to fund needed capital improvements including transportation infrastructure, jail expansion, library facilities and park improvements. The balance of these funds are dedicated to large, long term capital improvement projects, including new jail construction and major road infrastructure construction.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2012-631

On motion of Supervisor Monteith, Seconded by Supervisor Withrow
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini and Chairman O'Brien

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-I-20

Approval to Adopt the Revised Public Facilities Fees (PFF) Administrative Guidelines and Revisions to the Deferral Payment Contract

FISCAL IMPACT: (Continued)

While the change for temporary modular buildings that are removed prior to five years results in a refund of all associated fees (less the administrative fee), future use of the property would be subject to the payment in full of applicable PFF fees. The requested change for the deferral payment program for residential projects provides clarification of the existing process for ensuring receipt of the fees.

DISCUSSION:

The Stanislaus County's Public Facilities Fee (PFF) program was developed in 1989. The primary objective of the PFF program is to ensure that new development pays the capital costs associated with growth. The PFF program collects impact fees from new development throughout the County, both in cities and the unincorporated area, to fund the public facilities required to accommodate growth. The PFF Committee was formed to oversee the implementation of the program. Overall Administration and oversight of the PFF Program resides with the PFF Committee. The committee is comprised of the following department heads or their designees: Chief Executive Officer, Chief Building Official, Auditor-Controller, Public Works Director, Planning Director, County Counsel, and Capital Projects.

The PFF Committee meets monthly and has the responsibility of ensuring that all issues related to the PFF are managed in accordance with applicable rules and regulations. The committee was established to review policy matters related to the PFF program in the event of appeals regarding fees, the administration of the PFF program, and other issues that may arise as a result of the implementation of the PFF program.

The PFF administrative guidelines are used by Stanislaus County and all city partners to implement the program. The PFF administrative guidelines were first adopted in 1990 and updated in 2003 and 2010. On November 15, 2012, the PFF Committee met to consider revisions to the administrative guidelines and identified two areas; temporary modular buildings and the deferral payment program for residential projects. The PFF Committee is recommending changes that will provide the committee and other stakeholders additional guidance for administering the program.

The administrative guidelines currently require fees to be paid on temporary modular buildings without refunds. Instead, once the temporary modular is removed, the fee is credited towards other permanent construction of that parcel. Other jurisdictions will refund the fees under certain circumstances, including the City of Modesto where their fee program provides a refund, less administrative fees, if the temporary unit is removed within 5 years of payment of the fees. The PFF Committee is recommending that the guidelines be changed to allow a refund and recommends the following change:

Approval to Adopt the Revised Public Facilities Fees (PFF) Administrative Guidelines and Revisions to the Deferral Payment Contract

If an applicant who paid PFF on a temporary modular building removes that temporary modular within five (5) years of payment of the PFF, that applicant can apply in writing, provide proof of removal (demolition permit filed with Building Division), and be reimbursed for the entire amount of PFF paid less the administrative fees. The deadline for receipt of the written application for a rebate is five (5) years from the payment of PFF.

The Committee also recommends changes to the guidelines regarding deferral of the payment of the fee. Impact fees are due at the time of issuance of a building permit. This can cause a financial impediment to development. In response to this concern, in 1995, the Board approved an amendment to the guidelines to allow deferrals for residential development, resolution (89-1724). The 1995 deferral program allowed payment for residential development to be deferred to final inspection. Sometime later the deferral program changed.

Currently, the deferral program for residential projects allows deferral until the close of escrow on the sale of the residential building for which the building permit was issued, but does not specifically allow any deferral option. Gov't Code §66007 provides local public entities three options for deferral: (a) close of escrow; (b) the date of final inspection or the date the certificate of occupancy is issued; or (c) at an earlier time (for example 12 months from issuance of the permit).

The PFF Committee recommends revising the administrative guidelines to align with the adopted resolution (89-1724) as follows:

Payment of fees may be made at issuance of the residential building permit or may be deferred until the close of escrow on the sale of the residential building for which the building permit was issued. For those deferrals that do not pertain to a sale the fee must be paid prior to Final Inspection or prior to Certificate of Occupancy. Opting to defer payment of the fees requires the execution of a contract which shall be recorded as a lien, thus assuring that the County will receive the fees owed.

This change in the guidelines requires an amendment of the deferral contract, which is attached for your approval. Additionally, County Counsel identified additional, non-substantive changes necessary to ensure the contract is enforceable and less subject to interpretation.

The proposed revisions to the PFF Administrative Guidelines and the contract for deferral of fees will provide improved, comprehensive information to stakeholders of the Public Facilities Fees Program.

POLICY ISSUES:

The recommended actions support the Board's priority of A Strong Local Economy, A Well-Planned Infrastructure System, and Efficient Delivery of Public Services by administering an impact fee program to ensure that new development pays the capital costs associated with growth.

Approval to Adopt the Revised Public Facilities Fees (PFF) Administrative Guidelines and Revisions to the Deferral Payment Contract

STAFFING IMPACT:

The overall administration and oversight of the PFF program resides with the PFF committee. The committee is comprised of the following department heads or their designees: Chief Executive Officer, Chief Building Official, Auditor-Controller, Public Works Director, Planning Director, County Counsel, and Capital Projects.

CONTACT PERSON:

Keith Boggs, Assistant Executive Officer	Telephone: (209) 525-6333
Thomas Boze, Deputy County Counsel	Telephone: (209) 525-6376

C. Fees Application

5) Modular Buildings – Modular buildings are part of a construction style of buildings that are prefabricated or manufactured at a central location and shipped/moved to another location.

a) Temporary modular buildings will be charged the fee for its intended use. ~~When the coach is removed, the fee will be credited towards other permanent construction of that parcel.~~ **If an applicant who paid PFF on a temporary modular building removes that temporary building within five (5) years of payment of the PFF, that applicant can apply in writing, provide proof of removal (demolition permit filed with Building Division), and be reimbursed for the entire amount of PFF paid less administrative fees. The deadline for receipt of the written application for a rebate is five (5) years from the payment of PFF.**

b) Replacement of existing modular buildings with permanent construction will be charged the incremental difference in fee between the existing use and the new construction.

E. Deferrals

3) PFF Deferral Payment Program for Residential Projects

~~Most residential construction lenders do not include the PFF amounts as a part of the construction loan and paying the fees at the issuance of a residential building permit creates a financial hardship on builders, especially those builders with multiple, concurrent projects. Therefore, P~~payment of fees may be made at issuance of the residential building permit or may be deferred until the close of escrow on the sale of the residential building for which the building permit was issued. **For those deferrals that do not pertain to a sale the fee must be paid prior to Final Inspection or prior to Certificate of Occupancy.** Opting to defer payment of the fees requires the execution of a contract which shall be recorded as a lien, thus assuring that the County will receive the fees owed. ~~no later than the time of change of ownership of the property. This deferral option is available only for those builders with multiple, concurrent projects.~~

Recording Requested By:

When Recorded Mail to:

Name:

Mailing Address: 1010 10th Street, Suite 3400

City, State: Modesto, California
Zip Code: 95354-0847

**CONTRACT TO PAY STANISLAUS COUNTY
PUBLIC FACILITY FEES PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 66007**

This Contract is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California (the "County") and the Owner, _____, _____, Authorized Agent for _____, (the "Owner") of the Property described in Exhibit "A" (the "Property").

1. As a condition of issuance of the building permit (the "Permit") attached as Exhibit "A", County agrees to defer the payment of the County Public Facility Fees in the amount of \$ _____ (the "Fee"), which otherwise is due and payable upon building permit issuance.
2. In consideration for the deferral of payment of the Fee, Owner agrees to pay to the County the Fee prior to the date a "final inspection" or a "Certificate of Occupancy", as defined by Government Code section 66007(e), is issued for the Permit.
3. This Contract, which incorporates the property description set forth in Exhibit "A" by this reference, shall be recorded in the Office of the Stanislaus County Recorder and, from the date of recordation, shall constitute a lien for payment of the Fee in the amount set forth herein, which lien shall be enforceable against successors in interest to the undersigned at the time of building permit issuance and thereafter.
4. This Contract shall be recorded in the grantor/grantee index in the name of Stanislaus County, the grantee, and in the name of the Owner as the grantor.
5. Owner agrees that if the Fee is not paid when due, and where the Owner has failed to obtain a "final Inspection" or "Certificate of Occupancy", in addition to any other available remedy and without waiver thereof, the County may, in its sole discretion, cause the disconnection of utilities to the Property, including but not limited to electrical and natural gas. No building or structure on the Property shall be occupied until full payment of the Fee as provided herein. Owner further agrees that if the Fee is not paid within one year from issuance of the building permit on the Property, Owner shall pay the greater of the Fee amount stated in paragraph 1, or in an amount calculated under the County Public Facility Fees program in effect at the date of final inspection or issuance of the Certificate of Occupancy.
6. The County of Stanislaus shall record a release of the obligation to pay the fee upon receiving payment in full.

7. The Owner shall provide 10 days written notification to Stanislaus County, Building Permits Division, Department of Planning and Community Development, subsequent to the opening of any escrow for the sale of the Property, and the Owner shall provide in the escrow instructions that the Fee as calculated herein be paid in full to the County of Stanislaus prior to distributing the proceeds to the seller.
8. This Contract shall remain in full force and effect and continue as a lien on the Property until the County of Stanislaus receives the full amount of the Fee, which is the object of this Contract.
9. This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all other agreements, understandings, statements or representations, either oral or in writing.

The undersigned is/are the legal owner(s) of the property indicated above and acknowledge(s) responsibility to pay to the outstanding Fee balance according to the terms for payment noted herein.

Legal Owner Signature(s) – Each property owner signature must be notarized.

Signature	Printed Name	Date
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Signature	Printed Name	Date
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STATE OF CALIFORNIA)
) ss.
COUNTY OF STANISLAUS)

On _____, 20__, before me, _____, Notary Public in and for said State, personally appeared

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I Certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official Seal.

Signature _____ (Seal)