

ITEM V

Memo

To: Council Members
From: Anne Wescott Gerber, Budget & Policy Analyst
CC: Council Members-elect, Cindy Gust-Jenson, Roger Black, Roger Cutler, Boyd Ferguson, Rick Giardina, Tom Pippin
Date: November 24, 1999
Re: Final Impact Fee Analysis and Draft Ordinance for Review
File: Impact Fees

Attached for your review are the Final Impact Fee Analysis Report from Rick Giardina and the draft ordinance establishing impact fees as prepared by the City Attorney's Office. A briefing is scheduled for December 7, 1999 to allow the Council an opportunity to discuss the two documents and make revisions before the December 14, 1999 public hearing. Rick Giardina's associate, Tom Pippin, and Boyd Ferguson from the City Attorney's Office will be present at the December 7 briefing to answer Council questions. These documents are being distributed ahead of the December 7 packet delivery in order to give the Council extra time for review, and to provide the documents to the Council on the same day that they are being made available to the public for review.

If Council Members have questions or concerns before the December 7 briefing, please feel free to contact me. Advance notice will allow Council staff and the City Attorney's Office to properly research alternatives in time for further Council consideration.

The final report indicates that the maximum allowable fees that the Council may consider establishing are actually lower than those presented in the draft impact fee analysis report. Police and Fire fees were reduced by more than half from the draft report as a result of a revision in the number of commercial and industrial square feet that the City anticipates will be developed over the next 20 years (the cost of the improvements gets spread out among more square feet, resulting in lower fire and police fees for all development types). Fees for the construction of streets in the Westside Industrial Area were also reduced by more than half as a result of additional anticipated development and a decision by the Council and consultants to assess these fees to industrial, retail and office developments in the Westside Industrial Area. Parks fees for residential development have not changed since the draft report.

Council Members have raised the following concerns that the Council may wish to consider and discuss at their briefing on December 7, 1999:

1. Fees for West Valley City were not included in the draft report's fee comparison, and are of interest to several Council Members because of West Valley City's contiguous location, particularly for industrial and commercial development. West Valley's residential fees have been added to the final report's fee comparison, which is located on the last two pages of the report.

A statewide comparison of industrial and commercial fees is not currently available and Rick Giardina was unable to conduct such a survey in the timeframe already established by the Council. Many other cities break their fees down by specific land use, which is difficult to compare to the fees being considered by the Council.

However, Council staff has obtained information that indicates that West Valley City's impact fees for industrial development are currently \$115.00 per 1,000 square feet, or \$0.115 per square foot. The maximum allowable fees as presented by Rick Giardina for industrial development within the Westside Industrial Area (which might be the most competitive with West Valley City) are \$0.69 per square foot, which is approximately six times what West Valley City currently charges.

The Council may wish to note that the \$0.69 per square foot proposed for Salt Lake City represents the cost of constructing the streets and public safety facilities that will serve that area. The analysis conducted by West Valley City supported higher fees, but the West Valley City Council made a policy decision to assess fees at a percentage significantly less than what their analysis showed as the maximum allowable fee.

The Salt Lake City Council could consider making a similar policy decision. The Council may wish to consider at what level (up to the maximum allowable fee) impact fees should be assessed. Possible considerations with respect to this decision might include:

- The extent to which growth should "pay for itself" or the capital it requires,
- The extent to which existing residents should subsidize the capital improvements necessitated by growth,
- The extent to which impact fees might decrease the attractiveness of Salt Lake City as a desirable or financially feasible city in which to build, and
- The extent to which, should Salt Lake City be considered less attractive to developers, the loss of development would result in a net loss of revenue (new property or sales tax revenue in excess of the cost to provide City services and infrastructure).

The Council may wish to note that Rick Giardina and Tom Pippin have indicated that if the Council chooses to assess only a percentage of the maximum allowable impact fee, the percentage assessed should be uniform throughout development types in order to retain the integrity of the fee methodology.

1. The final report proposes maximum allowable impact fees of \$890 per residential unit, whether single-family or multi-family (the draft report indicated residential fees of \$1,395). Some Council Members have questioned how the fee methodology addresses the potential differential in use of capital infrastructure between single and multi-family developments. Rick Giardina has indicated that a differential was taken into account with respect to street fees applicable to residential developments in the Northwest Quadrant, which resulted in Northwest Quadrant multi-family residential fees that were lower than Northwest Quadrant single-family residential fees. Since residential developments outside of the Northwest Quadrant would not pay street fees, this differential does not exist within the proposed fee structure for residential developments outside the Northwest Quadrant.

Rick Giardina has indicated that, other than trip generation data relative to street fees, no definitive evidence exists within the industry on the extent to which single and multi-family developments differ in terms of their impact or reliance on services or capital infrastructure (an exception is utilities, because utility impact fees correspond to the size of the meter or connection). Second, since the size of the unit does not necessarily determine the number of occupants and therefore the exact impact, differentiating the impact between different sized apartments becomes somewhat of a subjective act, which the state legislation tried to prevent. As such, Rick has indicated that he could not develop a fee analysis that would support a differential fee structure. However, as indicated above, the Council may wish to assess only a percentage of the maximum allowable impact fee, although the percentage assessed should be uniform throughout development types in order to retain the integrity of the fee methodology.

The City's Attorney's Office has prepared the attached draft ordinance for the Council's consideration in accordance with the policy direction provided by the Council on November 9. In several areas, particularly in terms of the exemptions that the Council is considering granting, there are several different options to the draft language that the Council may wish to consider. These options are outlined by ordinance section as follows:

1. **18.98.050 - Calculation of impact fees based on fee schedule.**

As indicated above, the Council may assess impact fees at any level up to the maximum allowable level as supported by the Final Impact Fee Analysis. If the Council chooses to assess fees at some percentage of the maximum, however, Rick Giardina and Tom Pippin have advised that the percentage assessed should be uniform throughout development types in order to retain the integrity of the fee methodology.

In other words, if the Council agreed that the fee methodology was sound, but made a policy decision that only a portion of the maximum allowable fee should be recovered for capital expenditures, the Council could determine what percent of the maximum costs should be recovered. This percentage could then be established across the board, and regarded as Council policy. This would differentiate the Council's decision from one in which a Council might disagree with the methodology used, and try to compensate by lowering the fees, which might result in challenges to the fee analysis and assessment of fees as a whole.

2. 18.98.060 – Exemptions

The Council indicated that they wanted to consider within the ordinance provisions that would allow exemptions to impact fees in three circumstances:

- Automatic exemptions for affordable housing developments,
- Petitioned exemptions with a rebate provision for developments that could demonstrate a net positive fiscal impact to the City, and
- Petitioned exemptions for other developments that were receiving City subsidies, whereby the assessment of an impact fee would negate the subsidy or create fiscal inconsistencies in the Council's policies.

These proposed exemptions are addressed within the draft ordinance as follows:

Affordable Housing –

The Council indicated that it wished to exempt affordable housing developments from impact fees, but stated that it wanted to clearly define affordable housing. The draft ordinance defines affordable housing as “housing which is affordable to persons whose rent or mortgage payment does not exceed 30 percent of an annual income of a family whose income equals 80 percent of median income for Salt Lake City as determined by the Department of Housing and Urban Development.”

The “80%” definition would cover housing developments (rental and ownership) that are considered to be affordable to low income persons living within Salt Lake City. This would include rental and ownership housing projects currently being developed by the City Housing Division, the Housing Authority, Neighborhood Housing Services, the Community Development Corporation, and the Bridges Project.

The Council may wish to note that 542 units that fit this definition are currently “in the pipeline”. If these developments were not able to pull their permit or meet the “pipeline exemption” qualifications set forth in “Section 2. Effective Date” (last page of the discussion draft) which are 1) a commitment for financing and 2) the submittal of development plans to the City, the City would need to subsidize these fees from the General Fund at a total of approximately \$482,380 (542 x \$890). However, the Council may wish to note that may be a one-time subsidy, as this large amount of affordable housing development corresponds to the upcoming Olympics, and is not likely to continue in the future. According to the Administration, typically only about 30 units that meet this definition are built each year, which would only require approximately \$26,700 in General Fund subsidy.

The Council may wish to revise the affordable housing definition downward, which would allow fewer exemptions, to housing for very-low income persons whose annual income is 50% or less than median income. Alternatively, the Council could adjust the definition downward to 60% of median, which would allow projects receiving Low Income Housing Tax Credits (LIHTC) to qualify for an exemption. If the Council chose to “tighten” the affordable housing

definition by reducing the percent of median income to some percentage less than 80%, projects that did not meet the criteria for an automatic exemption could petition for an exemption under the “fiscal inconsistency” provision below.

Net Positive Fiscal Impact

The Council indicated that it may wish to consider exempting developments from impact fees that could demonstrate a net positive fiscal impact to the City (new property or sales tax revenue in excess of the cost to provide City services and infrastructure). Council Members indicated that it would be difficult to be sure upon application if the actual net fiscal impact of any particular development would be positive in excess of the applicable impact fees. As such, the draft ordinance reflects a rebate exemption concept used by other jurisdictions outside Utah. The developers could apply when their building permit is obtained for the ability to petition the City for an impact fee rebate three to six years after the development is permitted. They would be eligible to receive a rebate of their impact fees if they can demonstrate to the City that the development in question has actually contributed new net tax revenue to the City in excess of the impact fees assessed. In this way, the City would be able to subsidize the fee from realized tax revenues, and the General Fund would not be unduly burdened by the exemption.

Alternatively, rather than approaching this exemption as a rebate, the Council could consider allowing the Administration to waive fees upon the application for a building permit based on the belief, or upon preliminary analysis that a particular development would contribute a net positive fiscal impact to the City. This option would require that the General Fund subsidize the fee with the expectation that future revenues would “cover” the subsidy.

Both alternatives assume, as the draft ordinance indicates, that the responsibility for preparing the analysis and demonstrating the net positive fiscal impact is on the applicant, not the City. If the Council believes that the provision of such an analysis is not administratively feasible for an individual developer, the Council could consider indicating in the ordinance that the City would prepare such an analysis within a certain time frame for a specified fee. The fee would need to recover the cost of the City’s time to prepare the analysis.

The Council may wish to note that the definition of net positive fiscal impact indicates that the development must demonstrate new revenues in excess of the cost to the City to provide both services (operating budget) and capital improvements (CIP budget). The Council may wish to revise this definition to require only a net positive of new revenues as compared to the cost of related capital.

Fiscal Inconsistencies

The Council indicated its intent to avoid inconsistencies in its fiscal policies with relation to the assessment of impact fees. For example, the Council expressed its concern that the City might subsidize a project through the RDA that it felt was beneficial to the City, and then negate the subsidy through the assessment of impact fees. The Council’s consultants pointed out that this inconsistency could apply to any time that the City subsidizes a project, including housing developments, HOME grants, CDBG grants, etc. Therefore, the draft ordinance provides opportunities for developments that have been granted City assistance in excess of the

applicable impact fee to petition the Administration (CED Director) for consideration for a waiver of the fees.

3. Miscellaneous Provisions

The Council may also wish to note the following items that relate to the draft ordinance:

- The Council originally determined that, in order for a project to be eligible for a “pipeline exemption” (an exemption from fees on the effective date in the case of developments that are already in the pipeline, and where the assessment of fees was not included in the project’s proforma, so that the assessment of impact fees would throw the proforma out of balance), it had to meet three criteria: ownership of property, commitment for financing, and submittal of development plans to the City. Upon review, the City Attorney determined that ownership would be unlikely for many non-profit developers who were planning to finance the purchase of the land at the same time as they financed construction, so that criteria is not included in the ordinance.

The Council may wish to consider the extent to which a commitment of financing should be demonstrated. As required in the draft ordinance, it is conceivable that a developer might wish to demonstrate that cash financing has been committed. The Council may wish to consider whether cash financing commitments should be demonstrated through letters of credit, or whether, for the purpose of this one-time exemption, the City is willing to accept a simple statement of such commitment.

- The ordinance contemplates all petitions for waivers and exemptions being made to the Community and Economic Development Director, or his or her designee, rather than to the Council. The City Attorney felt that such petitions were most appropriately an administrative function. If desired, the Council could discuss with the City Attorney, how the Council might obtain legislative oversight of this process.