CITY OF SAN DIEGO
DEVELOPMENT IMPACT FEES
WHAT'S THE DIF?

SUMMARY

A Development Impact Fee (DIF) is a levy placed on a developer for new development projects. The fees are a set-aside to be used to finance new infrastructure projects, or upgrades, and to provide needed services[1] to the community. It is also meant to help offset negative impacts on the community near the new development, e.g., street widening to relieve traffic congestion.

Until recently, funds collected have been placed into individual accounts specific to the affected community and specific to the infrastructure need for which the funds were collected. However, over the years, collected funds have fallen short of providing the funds required to meet new infrastructure needs.

In his press release, February 18, 2022, when the City Council passed the *Build Better SD*[2] initiative, Mayor Gloria, addressed the problem associated with DIF funds, "Because of our outdated method of funding infrastructure projects, some of our communities are being left behind," Mayor Todd Gloria said. "Build Better SD will break down barriers to get more things done in our communities by allowing us to prioritize investments in areas where the needs are greatest. At the same time, it will help us achieve our bold climate goals, create more equity across our city and spur economic activity in the communities that need it most."[2]

"Inequitable planning policies and the lack of equitable funding tools have resulted in significant disparities in funding for parks, libraries, public streets and other public spaces. Under the old structure, funds were locked into place by community boundaries - meaning there were 43 different neighborhood funds. This resulted in wealthier communities receiving more infrastructure investments, while traditionally disadvantaged communities received significantly less funding for these spaces and services. There are significant infrastructure needs across the City and approximately $222 million were unable to be spent within that old structure in areas with the greatest need. Community funds were insufficient to fund existing planned projects. *Build Better SD* will help fund public spaces and facilities faster and more efficiently by expanding to a citywide model."[3]

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[1] In the context of a Development Impact Fee a service to the citizens is one that requires a "brick and mortar" facility to be built, e.g., a physical Fire Station is the vehicle to provide fire protection service to the community.
[2] https://www.sandiego.gov/mayor/mayor-gloria-launches-build-better-sd-improve-neighborhoods-faster#:~:text=%E2%80%9CBecause%20of%20our%20outdated%20method,where%20the%20needs%20are%20greatest.
[3] https://www.sandiego.gov/buildbettersd

However, the 2022-2023 San Diego County Grand Jury (Grand Jury) discovered the total amount in these community accounts is much higher. According to the *City of San Diego Development Impact Fees Funds Report for the Fiscal Year Ending June 30, 2022*,[4] the FY 2022 ending balance totaled $511,454,359 on deposit across all DIF accounts. To verify, the 2022-2023 Grand Jury reviewed the DIF funds balances and expenditures. The Grand Jury confirmed the total of $511,454,359 on deposit at the end of FY 2022.

DIF funds often remain unspent since the California Government Code (§66001(a)(3)(4)) governing the collection of these funds restricts them from being spent, or shared, across neighborhood lines – hence they are effectively "locked-up." Thus, the term "community lockbox" has evolved to euphemistically describe them. For many of these accounts the only activity is the expenses for City staff to "administer" the account.

This large amount of money sitting idle, affects the individual communities for which the funds were collected. Because DIF funds are generally not sufficient to cover the full cost of the infrastructure projects, they may not be initiated or completed in a timely fashion. In most situations projects require additional funds, which typically must be allocated from other sources such as the City's general fund or other infrastructure funds.

Without the commitment of additional funds, many DIF projects may never materialize resulting in the lack of the promised infrastructure in the affected communities. This effectively deprives communities of the timely benefits the funds were designed to fulfill. Unfortunately, as time passes the cost of every needed project grows and thus the fund balances are always chasing an upwardly moving target.

For the Grand Jury, it remains unclear how the City plans to reconcile the old community plans to the four new DIF accounts created, especially with the advent of the City's new *Build Better SD* initiative. With the restructuring of DIF funds under *Build Better SD*, the Grand Jury believes the City needs to develop an objective, and demonstrable plan for systematically liquidating the legacy DIF fund balances. In the absence of a tactical, executable, plan the money sitting idle in the community lockboxes may remain until additional funding sources are identified.

The Grand Jury recommends that the City of San Diego develop a rolling five-year plan[5] detailing the systematic liquidation of the approximately $511.5M legacy DIF fund balance. The plan should detail the sources and timing of all additional discretionary funds, including the use of new DIF funds collected under *Build Better SD*, that will facilitate build out of the infrastructure projects originally identified and promised under the old DIF structure.

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[4] *City of San Diego Development Impact Fees Funds Report For the Fiscal Year Ending June 30, 2022*, (Issued March 9, 2023), https://www.sandiego.gov/sites/default/files/funds_report_-_development_impact_fees_-_fiscal_year_2022.pdf

[5] Rolling Plans cover a rolling, five-year period; annually a new plan is created, removing the oldest year and adding on an additional year.

INTRODUCTION

What is a Development Impact Fee (DIF)? A DIF is a fee imposed on specific development projects to defray the cost of new or additional public facilities needed to serve those new developments. Common types of public facilities for which the fees are collected include traffic congestion mitigation, parks, fire stations, sewers and stormwater systems and libraries.

Development impact fees are used throughout the United States, particularly in regions with high population growth rates. They began to be widely used in the 1970s and 1980s. They are most prevalent in places with resistance to using general revenue sources to pay for growth-related costs.

The legal foundation for impact fees, as well as negotiated exactions, rests on the "rational nexus" test. This involves demonstrating that amount of the impact fee is commensurate with the new infrastructure provided by the fee. There must be a rational link [nexus] between the new facilities needed and the fees the new developers are being asked to pay.

The legal definition of a Development Impact Fee (DIF) is: "a monetary extraction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project."[6]

All the legal requirements for enactment of a DIF program are set forth in California Government Code § 66000-66008,[7] the "Mitigation Fee Act" or MFA. The California legislation creating the DIF structure was passed as Assembly Bill (AB) 1600[8] in 1987 and went into effect on January 1, 1989.

The City of San Diego DIF program was adopted into San Diego Municipal Code Chapter 14: General Regulations Article 2: General Development Regulations Division 6: Public Facility Regulations §142.0640 Development Impact Fees for Public Facilities and Spaces.[9] This code

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[6] California Government Code § 66000(b), https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=66000

[7] California Government Code § 66000-66025, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=66000

[8] California Government Code, Title 7. Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

[9] San Diego Municipal Code Chapter 14: General Regulations (10-2022) Article 2: General Development Regulations Division 6: Public Facility Regulations, §142.0640 Development Impact Fees for Public Facilities and Spaces, https://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art02Division06.pdf

was enacted by San Diego City Ordinance O-18451,[10] dated December 9, 1997, and was effective January 1, 2000. This code has undergone many changes since, with the latest effective March 3, 2021, by San Diego Ordinance O-21288.[11]

San Diego Municipal Code § 142.0640 (a) provides for the assessment and administration of DIFs for Public Facilities and Spaces. It states: "The purpose of assessing development impact fees is to implement the City's General Plan[12] (adopted by City Council March 10, 2008, Resolution Number: R-303473)[13] which contains policies related to the maintenance of an effective facilities financing program to ensure the impact of new development is mitigated through appropriate fees.

METHODOLOGY

The 2022-2023 Grand Jury interviewed:

- Various public agencies and community partners.

The following documents were reviewed:

- California Assembly Bill 1600 (1987) Mitigation Fee Act (MFA)
- City of San Diego General Plan of 2008.
- San Diego City Council Policy: Prioritizing Capital Improvement Program Projects 800-14
- City of San Diego Community Plans
- City of San Diego *Build Better SD* Plan
- Technical Analysis Evaluation of Development Impact Fee (DIF) Methodologies, Prepared for: City of San Diego, Keyser Marston Associates (2019)
- City of San Diego FY 2023-2027 Five Year Funding Outlook
- City of San Diego FY 2024-2028 Five Year Funding Outlook
- City of San Diego Adopted Budgets for FY 2020, FY 2021, FY 2022, and FY 2023
- City of San Diego FY 2024 Proposed Budget
- City of San Diego Development Impact Fees Funds Report For the Fiscal Year Ending June 30, 2021
- City of San Diego Development Impact Fees Funds Report For the Fiscal Year Ending June 30, 2022
- Reports by the Office of the Independent Budget Analyst (IBA).
  - IBA Reports: 14-23, 22-04, 23-03 and 22-32

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[10] San Diego City Council Ordinance O-18451, December 9, 1997, https://docs.sandiego.gov/council_reso_ordinance/rao1997/O-18451.pdf

[11] San Diego City Council Ordinance O-21288, March 3, 2021, https://docs.sandiego.gov/council_reso_ordinance/rao2021/O-21288.pdf

[12] *City of San Diego General Plan, 2008*, Adopted by the: Council of the City of San Diego March 10, 2008, Resolution Number: R-303473, https://www.sandiego.gov/sites/default/files/legacy//planning/genplan/pdf/generalplan/adoptedtoc.pdf

[13] San Diego City Council Resolution R-303473, March 14, 2008, adopts the 2008 General Plan, https://docs.sandiego.gov/council_reso_ordinance/rao2008/R-303473.pdf

- California Government Code, Title 7, Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, § 66000 – 66008
- Relevant local news sources/articles.
- San Diego City Council Resolutions: R-303473, R-313688, R-314267, R-314271, R-314272 & R-314273.
- San Diego Ordinances: O-18451 & O-21288
- Walker v. City of San Clemente (2015) Daniel Walker, as Trustee, etc., et al., Plaintiffs and Appellants, v. City of San Clemente, et al., Defendants and Appellants, G050552 Decided: August 28, 2015
- Memorandum of Law, Development Impact Fees, November 17, 2004, to: Councilman Brian Maienschein, Chair of PS&NS Committee, and PS&NS Committee Members, Office of The City Attorney City of San Diego, Casey Gwinn City Attorney Civil Division

DISCUSSION

The City of San Diego's capital assets span a wide variety of categories that include streets and related right-of-way features; storm water and drainage systems; water and sewer systems; public buildings such as libraries, parks, recreational and community centers; and public safety facilities such as police, fire, and lifeguard stations.

Capital improvement projects are the addition of a permanent structure, structural change, or the restoration of the City's assets that will enhance the asset's overall value, prolong its useful life, or adapt it to new uses. The City of San Diego's Capital Improvement Program (CIP) is defined as the City's financial plan for the construction of the City's capital improvements which includes the projects identified as part of the DIF/FBA program.
San Diego City Council Policy No. 800-14[14], updated in November 2022, details the process by which CIP Projects are identified, categorized, and planned.

The City's goal is to administer a capital planning prioritization process to optimize the use of available funding resources for projects and guide an objective methodology to produce equal and equitable outcomes. This includes the prioritization of projects funded through the collection of DIF/FBA Fees.

Development Impact Fees & Facilities Benefit Assessment Fees Determination

Currently, impact fees are assessed by the City of San Diego using two methodologies; Facilities Benefit Assessment (FBA) and the traditional DIF described above. Throughout this report they will be collectively referred to as DIFs.

Historically, the City of San Diego has used FBAs in newly urbanizing communities and DIFs in older, more built-out urban communities. The City has 12 communities that have an

[14] *Prioritizing Capital Improvement Program Projects* Policy No. 800-14, San Diego City Council, December 16, 2022, https://docs.sandiego.gov/councilpolicies/cpd_800-14.pdf

FBA. In contrast, the City collects DIF funds in more than 30 communities. While there is no distinction between the enabling statutes for the DIFs and FBAs, the way the City of San Diego calculates these fees, is different for each. Since DIF fees are collected to improve existing infrastructure they only fund 7-10% of the total cost. In contrast, FBA fees must fully cover additional infrastructure needs they are designed to fund 100% of the cost of new infrastructure needs.

In practice since new development is incremental, the full funds needed for the community infrastructure needs aren't completely collected until the community reaches full build-out. This is why both DIF and FBA accounts "collect funds" until sufficient funding levels are reached to pay for the planned public facility.

For either, when fees are paid to the City, they are placed in interest bearing accounts[15] and remain in these community/infrastructure specific accounts. Both fund types are subject to administrative fees charged by the City which can reach approx. 8% of the account balance per year.[16]

The amount of funds that are actually budgeted and spent each year, for either improving existing infrastructure or fulfilling the need for new infrastructure, can be quite different.

DIF/FBA Budgeted Spending FY 2024

According to the City's proposed budget for FY 2024, $6,400,000 of DIF funds are allocated for three projects. (Figure 1)

Development Impact Fee Projects	Project Status	FY 2024
East Village Green Phase 1	Continuing	$3,900,000
Miramar Road - I805 Easterly Ramps	Warranty	$2,000,000
Park Boulevard At-Grade Crossing	Continuing	$500,000
	Total:	**$6,400,000**

Figure 1: Development Impact Fee FY 2024 Budgeted Plan[17]

For FY 2024 $19,666,376 of FBA funds are allocated in the CIP budget for five projects, (Figure 2).

[15] For example, in Fiscal Year Ended June 2021, these accounts earned $1,863,475 in interest.
[16] Planning Department Financial & Administrative Services Division Facilities Financing Section, October 13, 2017, https://www.sandiego.gov/sites/default/files/introduction_to_facilities_finance.pdf
[17] Capital Improvements Program – Fiscal Year 2024 Adopted Budget Summary, https://www.sandiego.gov/sites/default/files/pb_v3.pdf

Project	Project Status	FY 2024
Camino Del Sur Widening -South	Continuing	$1,345,161
El Camino Real to Via De La Valle	Warranty	$14,997,804
McGonigle Canyon Park P-2	Continuing	$812,554
Miramar Road I805 Easterly Ramps	Warranty	$510,857
Sage Canyon NP Concession Bldg Develop	Continuing	$2,000,000
	Total:	**$19,666,376**

***Figure 2: Facilities Benefit Assessment FY 2024 Budgeted Plan*[18]**

Total budgeted DIF/FBA spending for FY 2024 is $26,066,376.

Historical DIF/FBA Spending FY 2021 – FY 2023

Yearly DIF/FBA budgets and spending can be very uneven as reflected below detailing the budgeted expenditures for the period FY 2021 through FY 2024 (Figure 3).
By comparison, combined DIF/FBA budgeted spending for FY 2023[19] was $676,970, FY 2022[20] $19,816,420 and FY 2021[21] only $800,000. Note that FY 2021 saw no budgeted DIF spending.

Funding Source	FY 2024	FY 2023	FY 2022	FY 2021
Development Impact Fee	$6,400,000	$471,119	$10,236,420	$0
Facilities Benefit Assessment	$19,666,376	$205,851	$9,580,000	$800,000
Totals:	**$26,066,376**	**$676,970**	**$19,816,420**	**$800,000**

Figure 3: DIF/FBA Spending FY 2021 – FY 2024

The significance of this uneven, and at times zero, budgeted expenditures is fully realized when comparison is made to the anticipated yearly DIF/FBA revenue.

DIF/FBA Anticipated Revenue FY 2021 – FY 2024

The revenue anticipated[22] for both DIF/FBA revenue for the period FY 2024 through FY 2028 is reflected below. (Figure 4)

[18] Capital Improvements Program – Fiscal Year 2024 Adopted Budget Summary, https://www.sandiego.gov/sites/default/files/pb_v3.pdf
[19] Capital Improvements Program – Fiscal Year 2023 Adopted Budget Summary, https://www.sandiego.gov/sites/default/files/fy23ab_v3summary.pdf
[20] Capital Improvements Program – Fiscal Year 2022 Adopted Budget Summary, www.sandiego.gov/sites/default/files/fy22ab_v3summary.pdf
[21] Capital Improvements Program – Fiscal Year 2021 Adopted Budget Summary, https://www.sandiego.gov/sites/default/files/fy21ab_v3summary.pdf
[22] These are only estimates and may or may not reflect the actual revenues for the fiscal years shown.

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Impact Fee Revenue	**$69,884,000**	**$72,238,000**	**$72,238,000**	**$72,238,000**	**$72,238,000**

Figure 4: Development Impact Fee Revenue FY 2024 – FY2028[23]

When comparing the FY 2024 spending level of $26,066,376, to the anticipated revenue of $69,884,000 it becomes evident that the fund balances can only continue to grow as the spending is effectively only 37.3% of revenue. In the absence of any planned increase in DIF/FBA spending over the FY 2024 through FY 2028 period the fund balances will grow by approx. $46.2M yearly. This would equate to a DIF/FBA composite find balance of approx. $696M.[24]

Build Better SD – Redefining the DIF Structure

In August 2022, the San Diego City Council approved[25] the *Build Better SD*"[26] initiative, effective October 21, 2022, creating three new Citywide DIF accounts for: Fire-Rescue,[27] Libraries[28] and Mobility[29] projects.[30] The fourth is *Parks for All of Us[31]* created in August 2022.

Key to the *Build Better SD* initiative is the promise to provide faster delivery of the public infrastructure needs, with equity, across the City.[32] According to the *Build Better SD* page of the City's website: "Inequitable planning policies and the lack of equitable funding tools have resulted in significant disparities in funding for parks, libraries, public streets, and other public spaces. This resulted in wealthier communities receiving more infrastructure

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[23] Fiscal Year 2024-2028 Five-Year Capital Infrastructure Planning Outlook, https://www.sandiego.gov/sites/default/files/fy23-27-five-year-capital-infrastructure-planning-outlook_0.pdf
[24] This is an estimate by the Grand Jury calculated by adding $46.2M yearly, for four years, to the FY 2022 ending funds balance of approx. $511.5M.
[25] San Diego City Council Resolution R-314267, August 9, 2022, https://docs.sandiego.gov/council_reso_ordinance/rao2022/R-314267.pdf
[26] Build Better SD, https://www.sandiego.gov/buildbettersd
[27] San Diego City Council Resolution R-314271, August 9, 2022, adopts a new Citywide Fire-Rescue DIF to replace the existing Fire-Rescue component of Community Planning Area-based DIFs, https://docs.sandiego.gov/council_reso_ordinance/rao2022/R-314271.pdf
[28] San Diego City Council Resolution R-314272, August 9, 2022, adopts a new Citywide Library DIF to replace the existing library component of Community Planning Area-based DIFs, https://docs.sandiego.gov/council_reso_ordinance/rao2022/R-314272.pdf
[29] San Diego City Council Resolution R-314273, August 9, 2022, adopts a new Citywide Mobility DIF to replace the existing transportation component of Community Planning Area-based DIFs, https://docs.sandiego.gov/council_reso_ordinance/rao2022/R-314273.pdf
[30] Mobility projects include, e.g., sidewalks, streetlights, and safety improvements.
[31] San Diego City Council Resolution R-313688, August 13, 2021, adopts a new Citywide Parks DIF to replace existing Parks component of Community Planning Area-based DIFs, https://docs.sandiego.gov/council_reso_ordinance/rao2021/R-313688.pdf
[32] San Diego City Council Resolution R-314267, August 9, 2022, adopts a Citywide initiative to support the City of San Diego's equity, access, conservation, and sustainability goals. https://docs.sandiego.gov/council_reso_ordinance/rao2022/R-314267.pdf

investments, while traditionally disadvantaged communities received significantly less funding for these spaces and services."[33]

The new DIF program will still have fees calculated, collected, and allocated by asset class but instead of being available by individual communities, they will be in City-wide fund accounts allowing the City to collect and allocate fees across current geographical boundaries to facilitate providing Citywide assets that benefit all San Diegans.
The Citywide accounts will allow funds to be spent on any infrastructure project anywhere in the City to promote more rapid infrastructure improvements, which is a radical shift from the current DIF fund process.

However, during its investigation the Grand Jury could not clarify how the City will reconcile existing community plans with the four new DIF accounts created under *Build Better SD* and, more importantly, how, and when a plan for the liquidation of the current DIF fund balances will be developed and implemented.

"The developer impact fee program is broken and has been for a long time," said Councilmember Joe LaCava. "As it stands, the program cannot deliver the needed infrastructure and facilities that community plans promised. Our older communities need a new approach." [34]

City Planning Director Heidi Vonblum also noted, "Infrastructure serves our entire City. It does not respect community boundaries, and our infrastructure funds should be available to align with this reality. In addition to prioritizing investments in areas with the greatest needs, we can also deliver much-needed public infrastructure projects to our entire City more quickly." [34]

In an article in the San Diego Union Tribune of February 18, 2022, Vonblum was quoted as saying, "…the new Citywide fund would allow City officials to close small funding gaps to accelerate construction of such infrastructure projects. *Build Better SD* will continue to protect existing funds in their community lockboxes. We anticipate being able to provide more money to finish off projects that have been languishing in the different funds over the last several decades."[36]

In a news release, District 1 Councilperson Joe LaCava applauded the initiative, saying: "Build Better SD will be a transparent conversation with our neighborhoods to deliver the infrastructure and City facilities to serve [an] increase in housing. Build Better SD ensures

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[33] *City of San Diego, Build Better SD*, https://www.sandiego.gov/buildbettersd
[34] https://www.sandiego.gov/mayor/mayor-gloria-launches-build-better-sd-improve-neighborhoods-faster#:~:text=%E2%80%9CBecause%20of%20our%20outdated%20method,where%20the%20needs%20are%20greatest.
[35]ibid
[36] *San Diego May Shift Infrastructure Funding Sharply Toward Low Income Areas*, San Diego Union Tribune, February 18, 2022, https://www.sandiegouniontribune.com/news/politics/story/2022-02-18/san-diego-may-shift-infrastructure-funding-sharply-toward-low-income-areas

that we can allocate infrastructure dollars when and where they will have greatest impact while we continue to protect existing funds in their community lockboxes."[37]

The implied promise of *Build Better SD* is that DIF funds, whether collected under the old program or the new *Build Better SD* DIF program, would be spent more quickly and efficiently.

Despite the DIF program changes brought on by *Build Better SD*, previously collected fees will remain restricted to the neighborhood in which they were collected, i.e., the individual community lockboxes. Only new funds will be able to span communities.

The challenge for City planners will be ensuring that existing accounts are systematically augmented with funds to provide the projects for which they were originally earmarked, and in the communities for which they were originally intended.

Recall Planning Director Vonblum' s promise, "We anticipate being able to provide more money to finish off projects that have been languishing in the different funds over the last several decades."[38]

However, the Grand Jury discovered there might be further issues with the *Build Better SD* initiative. California Government Code § 66001 (a)(3)[39] requires there to be, "…a reasonable relationship between the fee's use and the type of development project on which the fee is imposed." California Government Code § 66001 (b) requires that, "there is a ***reasonable relationship between*** the amount of the fee and the cost of ***the public facility or portion of the public facility attributable to the development on which the fee is imposed***."

This statute suggests that the DIF funds be spent in the same locale as where the development happened. Since *Build Better SD* can effectively divert funds collected from one neighborhood to another, the legality under the MFA legislation may be questionable.

Build Better SD DIF Fee Revenue FY 2024 – FY 2028

Moving forward, funds will be collected in four Citywide DIF accounts as part of *Build Better SD*. Because these coalesced funds will each contain a significant number of flexible resources, they will be able to be used to augment and liquidate the funds residing in the City's old "lockbox" DIF accounts.

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[37] *San Diego's New Initiative For Sharing Capital Projects Funding Won't Cost La Jolla, Local Planners Are Told,* La Jolla Light, August 7, 2022, https://www.lajollalight.com/news/story/2022-08-07/san-diegos-new-initiative-for-sharing-capital-projects-funding-wont-cost-la-jolla-local-planners-are-told

[38] *San Diego May Shift Infrastructure Funding Sharply Toward Low Income Areas*, Sn Diego Union Tribune, February 18, 2022, https://www.sandiegouniontribune.com/news/politics/story/2022-02-18/san-diego-may-shift-infrastructure-funding-sharply-toward-low-income-areas

[39] California Government Code, Title 7, Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, § 66001, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

According to the City's Fiscal Year 2024-2028 Five-Year Capital Infrastructure Planning Outlook,[40] community-based DIF funding income for the five years FY 2024 through FY 2028 is estimated at approximately $351M. (Figure 3) Income for Facility Benefits Assessments (FBA) is approximately $7,820,000 for FY 2024 alone. Note: FY 2024 is the last year DIF/FBA funds will be collected in the legacy community-based accounts. (Figure 5)

	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	Totals
Neighborhood DIF	$6,352,000					$6,352,000
Libraries - Citywide	$1,072,000	$5,870,000	$5,870,000	$5,870,000	$5,870,000	$24,552,000
Fire - Base	$910,875	$2,596,125	$2,596,125	$2,596,125	$2,596,125	$11,295,375
Fire - FDC	$130,125	$370,875	$370,875	$370,875	$370,875	$1,613,625
Mobility - CM Local	$2,972,000	$3,360,000	$3,360,000	$3,360,000	$3,360,000	$16,412,000
Mobility - Citywide	$6,525,000	$15,939,000	$15,939,000	$15,939,000	$15,939,000	$70,281,000
RTCIP	$5,293,000	$5,293,000	$5,293,000	$5,293,000	$5,293,000	$26,465,000
Parks - Citywide	$7,761,800	$7,761,800	$7,761,800	$7,761,800	$7,761,800	$38,809,000
Parks - CoC	$15,523,600	$15,523,600	$15,523,600	$15,523,600	$15,523,600	$77,618,000
Parks - Non CoC	$15,523,600	$15,523,600	$15,523,600	$15,523,600	$15,523,600	$77,618,000
SubTotals:	$62,064,000	$72,238,000	$72,238,000	$72,238,000	$72,238,000	**$351,016,000**
Facilities Benefit Assessment	$7,820,000					**$7,820,000**
Total:	**$69,884,000**				**Grand Total:**	**$358,836,000**

Figure 5: Projected Development Impact Fee Revenue FY 2024 – FY 2028

According to the Five-Year Capital Infrastructure Planning Outlook, "This Citywide initiative [*Build Better SD*] also transitions away from former public facilities financing plans to reliance on the current annual capital improvement program budget to ensure development impact fees are expended on relevant and meaningful projects and enables the quick delivery of public spaces and infrastructure."[41]

San Diego General Plan & Community Plans

The City's General Plan[42] is its constitution for development. It is comprised of 10 elements that provide a comprehensive slate of Citywide policies supporting the 'City of Villages'[43] central theme of the City's overall growth strategy. The strategy focuses growth into mixed-use activity centers that are pedestrian-friendly and linked to an improved regional transportation system. Each "village center" is the mixed-use heart of its neighborhood or larger community.

The City of San Diego is divided up into 52 community planning areas each of which have their own community plan. Community plans refine the General Plan's Citywide policies, designate land uses and housing densities, and provide additional site-specific

[40] Fiscal Year 2024-2028 Five-Year Capital Infrastructure Planning Outlook, https://www.sandiego.gov/sites/default/files/fy23-27-five-year-capital-infrastructure-planning-outlook_0.pdf
[41] Fiscal Year 2024-2028 Five-Year Capital Infrastructure Planning Outlook, https://www.sandiego.gov/sites/default/files/fy23-27-five-year-capital-infrastructure-planning-outlook_0.pdf
[42] City of San Diego General Plan 2008, Adopted by the: Council of the City of San Diego March 10, 2008, Council Resolution Number: R-303473, https://www.sandiego.gov/planning/work/general-plan
[43] https://www.sandiego.gov/planning/work/general-plan/pilot-village

recommendations for each community. They are the mechanism for the community to influence the City's General Plan and through which a community's priorities are implemented through the CIP process.

Currently, the City is in the process of updating five community plans. "Since the adoption of the General Plan in 2008, the Planning Department has completed a comprehensive plan update of only fifteen (15) community plans to reflect current conditions and the long-term vision under the General Plan City of Villages strategy."[44]

Each community plan has an associated Public Facilities Financing Plan (PFFP), or an Impact Fee Study (IFS).[45] Both serve as the implementation document for the community plan. They identify and prioritize public infrastructure projects, including police, fire, library, parks, and transportation facilities deemed necessary for each community. The PFFP or IFS identifies costs for those projects and existing and potential funding sources. They form the basis for how the City has set DIF/FBA fees to be collected for each project in a community.

The Grand Jury believes that since the community plans and their associated PFFP or IFS plans formed the basis of DIF and FBA fee calculations, it would be prudent for the City to ensure all community plans are reviewed for accuracy and updated to represent the future needs of each respective community. Many of these community plans have not been updated in close to a decade and since *Build Better SD* will essentially pit the infrastructure needs of communities with legacy DIF/FBA funds against Citywide infrastructure needs all community plans should be updated.

The City of San Diego should take action to educate Community Planning Groups to any impact *Build Better SD* will have on the CIP process moving forward, particularly as it effects how legacy DIF/FBA funds will used to fund new infrastructure needs moving forward.

Community Planning Groups

Community Planning Groups (CPGs) are organizations officially recognized by the San Diego City Council to advise the City on land use issues and infrastructure needs in their neighborhoods.

The San Diego CPG webpage explains, "The City Council adopted policies in the 1960s and 1970s that established and recognized community planning groups as formal mechanisms for community input in the land use decision-making processes. There has been long-standing citizen involvement in planning in the City of San Diego. CPGs provide citizens with an opportunity for involvement in advising the City Council, the Planning Commission, and other decision-makers on development projects, general or community plan amendments, rezonings and public facilities. The recommendations of CPGs are integral components of the CIP planning process." [46]

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[44] City of San Diego, Community Plan Update, https://www.sandiego.gov/planning/community-plans/updates
[45] Of the 56 San Diego Community Plans eight use the IFS v. PFFP.
[46] City of San Diego Community Planning Groups, https://www.sandiego.gov/planning/community-plans

Considering the City's funding deficits identified earlier, the Grand Jury believes that San Diego CPGs should take action to update all community plans to reflect the true infrastructure needs moving forward. The competition for future funding will undoubtedly become even more competitive in the next five plus years. Accurate community plans will aid in the City prioritizing those projects that provide the most benefit to each community.

Enacted in 2013, City Council Policy 000-32, *Neighborhood Input On Infrastructure Needs and Priorities*,[47] was updated in December 2022 to prepare for the use of Citywide DIF funds collected in accordance with *Build Better SD.* The policy sets guidelines for the City to engage with San Diegans to collect input about neighborhood infrastructure needs.

According to the policy, "…it is now recognized that there are many other organizations and individuals that do not participate in the community planning group process that have valuable input in all City matters, including the City's CIP budget. While community planning groups are a key stakeholder, hearing from a broader cross-section of our City's residents is critical to ensuring equitable community input on the City's CIP. Only by improving and changing the community input process on the City's CIP budget can the City begin to deliver critically needed infrastructure that truly meets the needs of residents."[48]

The City needs to identify new ways to better educate and engage the public regarding development impact fees. A suggestion might be that the Transportation, Water and other departments – that regularly send notifications and/or billing to residents – include an informative flyer describing the collection process, how the funds are used to provide value to all San Diego communities. Flyers might include directions to the City website to view the DIF rolling five-year plans, including details on how to contact appropriate City departments and each district City Council Member.

In concert, the City of San Diego should take action to educate Community Planning Groups to any impact *Build Better SD* will have on the CIP process moving forward, particularly as it effects how funds collected under the new DIF structure will be used to fund broad Citywide infrastructure needs moving forward.

Mitigation Fee Act Five (5) Year Findings and Nexus Report Requirements

A key element of the Mitigation Fee Act (MFA)[49] requires local agencies to adopt "five-year findings, accounting for DIF proceeds that are held unexpended[50] for more than five years. It

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[47] San Diego City Council Policy 000-32 Neighborhood Input On Infrastructure Needs and Priorities, December 16, 2022, https://docs.sandiego.gov/councilpolicies/cpd_000-32.pdf

[48] San Diego City Council Policy 000-32 Neighborhood Input On Infrastructure Needs and Priorities, December 16, 2022, https://docs.sandiego.gov/councilpolicies/cpd_000-32.pdf

[49] California Government Code, Title 7, Planning and Land Use, Division 1. Planning and Zoning, Chapter 5, Fees for Development Projects, § 66000 - 66008 https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article

[50] Unexpended Funds means any funding not actually expended or committed for the purposes specified.

further provides that agencies must refund[51] the moneys if they fail to make the required findings.[52]

These findings, known as nexus findings, are required to demonstrate a logical connection between a needed capital improvement, or facility, and the development activity that the DIF is collected to mitigate. A nexus is intended to identify a reasonable timeline for a DIF related project's completion.

Since there remains many community plans that were last updated more than five years ago, it highlights the need for the City to update community plans to ensure all infrastructure needs (for which DIF/FBA fees were collected) remain accurate. Understanding what infrastructure needs remain in each community is critical for accurate five-year nexus reporting.

Nexus studies are required by California Government Code § 66001(d)(1) (A) through (D),[53] which provides that: For the fifth fiscal year following the first deposit into the [DIF] account or fund, and every five years thereafter, the local agency shall make all the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:

- Identify the purpose to which the fee is to be applied.
- Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
- Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements.
- Designate the approximate dates on which the funding is expected to be deposited into the appropriate account or fund.
- Annually report the purpose of the DIF and the specific facilities to be financed with the DIFs.

Further 66006(b)(1)(B) through (E) requires:

- A brief description of the type of fee in the account or fund.
- The amount of the fee.
- The beginning and ending balance of the account or fund.

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[51] California Government Code § 66001(e) states refund is to be made to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll of the development project or projects on a prorated basis, including any interest accrued thereon.

[52] *The Mitigation Fee Act's Five-Year Findings Requirement: Beware Costly Pitfalls*, League of California Cities 2022 City Attorneys Spring Conference Friday, May 6, 2022, https://www.calcities.org/docs/default-source/City-attorneys/the-mitigation-fee-act%27s-five-year-findings---paper.pdf?sfvrsn=9b82634e_3

[53] California Government Code, Title 7, Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, § 66000-66008, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

- The amount of the fees collected and the interest earned.
- An 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 fees.

California Government Code § 66001(e)[54] further provides: "the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then current record owner or owners of the lots or units of the development project or projects on a prorated basis, the unexpended portion of the fee, and any interest accrued thereon." This statutory review and refund requirement prevents local agencies from collecting and holding a development fee for an extended period without a clear and demonstrable plan to use the fee for the purpose for which it was imposed.

In 2022, the League of California Cities published a report titled: *The Mitigation Fee Act's Five-Year Findings Requirement: Beware Costly Pitfalls*[55] which provided cautionary insight into the problems associated with lack of compliance to the five-year nexus reporting by many municipalities throughout the state.

The report states: "The Mitigation Fee Act (specifically Government Code § 66001, subdivision (d)) requires local agencies to adopt "five-year findings" accounting for development impact fee proceeds held unexpended for more than five years. It further provides that agencies must refund the moneys held if they fail to make the required findings. The statute is vaguely written, and recent court decisions have interpreted it in a draconian manner, suggesting that a local agency must automatically refund its development fee proceeds if the court determines the findings to be defective, without any chance for the agency to cure the defect. As a result, there appears to be an increase in lawsuits seeking such refunds."

Per the report, "…every City that has development fee proceeds collected and unexpended for more than five years faces the risk of such litigation, including arguments that it is too late for the City to cure any defects in its most-recent five-year findings and that it must automatically refund all the retained funds."[56]

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[54] California Government Code, Title 7 – Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, § 66001€, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

[55] *The Mitigation Fee Act's Five-Year Findings Requirement: Beware Costly Pitfalls*, League Of California Cities, May 6, 2022, https://www.calcities.org/docs/default-source/City-attorneys/the-mitigation-fee-act%27s-five-year-findings---paper.pdf?sfvrsn=9b82634e_3

[56] California Government Code § 66001(e) states refund is to be made to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll of the development project or projects on a prorated basis, including any interest accrued thereon.

The report references a lawsuit that sets precedence for the importance of nexus studies to be compliant to the requirements of the Mitigation Fee Act.[57] Plaintiffs and respondents Daniel Walker, as Trustee for the 1997 Walker Family Trust, and W. Justin McCarthy (collectively, Plaintiffs) filed a lawsuit to compel the City of San Clemente to refund the unused portion of a Beach Parking Impact Fee.

Plaintiffs alleged the five-year findings the City made in 2009 failed to satisfy the Act's requirements and did not justify the City's continued retention of the unexpended Beach Parking Impact Fees because the increased parking demand had not materialized over the ensuing 20 years. The trial court agreed and entered judgment ordering the City to refund approximately $10.5 million in unexpended impact fees to the current property owners on which the fees were imposed.

According to the City of San Diego *Development Impact Fees Funds Report for the Fiscal Year Ending June 30, 2022*,[58] there remains $243,373.203 in unexpended funds on deposit greater than five years.

The Grand Jury believes that the City of San Diego's reporting of nexus findings may not meet strict compliance to the provisions of the MFA. However, the individual community Development Impact Fee Plans (DIF Plans) appear the closest City planning documents the Grand Jury could discover that comply with the requirements for nexus reporting. The City currently prepares two types of DIF Plans, each representative of a different impact fee methodology: Public Facilities Financing Plan (PFFP) and Impact Fee Study (IFS).

Each community plan has an associated DIF (PFFP or IFS) plan which typically provides both detailed and general descriptions of planned facilities or public improvements, by asset type for the community. These plans are meant to comply with the respective community plans and the City's overall General Plan.

New Development Impact Fee Nexus Report Standards

California AB 602[59] (codified in California Government Code § 65940),[60] sets new standards for nexus studies that take effect in two steps. Cities and counties conducting nexus studies on

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[57] Walker v. City of San Clemente (2015) Daniel Walker, as Trustee, etc., et al., Plaintiffs and Appellants, v. City of San Clemente, et al., Defendants and Appellants, G050552 Decided: August 28, 2015 https://caselaw.findlaw.com/ca-court-of-appeal/1712106.html

[58] *City of San Diego Development Impact Fees Funds Report For the Fiscal Year Ending June 30, 2022*, (Issued March 9, 2023), https://www.sandiego.gov/sites/default/files/funds_report_-_development_impact_fees_-_fiscal_year_2022.pdf

[59] California AB 602, Development Fees: Impact Fee Nexus Study - An Act To Amend § 65940, https://legiscan.com/CA/text/AB602/id/2434861

[60] California Government Code, Title 7 – Planning And Land Use, Division 1 – Planning And Zoning, Chapter 4.5 - Review and Approval of Development Projects, Article 3 - Applications for Development Projects, § 65940, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

or after January 1, 2022, must identify the existing level of service for each public facility studied and the proposed new level of service the fee will fund and explain why the new level of service is appropriate.[61]
Starting July 1, 2022, new nexus studies must provide for fees that are proportional to the square footage of new development unless the study establishes one of the following:

- Square footage is not an appropriate metric to calculate impact fees for a project.
- An alternative method of calculating the fee establishes a reasonable relationship between the fee charged and the burden the development poses.
- An archive of impact fee nexus studies and cost of service studies performed since January 1, 2018.
- The current and five previous annual fee reports.

Beginning January 1, 2022, AB 602 also extends the nexus study timeline to every eight years versus the current five years. To assist cities and counties to meet all the new requirements, AB 602 requires the California Department of Housing and Community Development[62] to develop a model nexus study template by January 1, 2024. Hopefully, AB 602 will attract greater scrutiny of the annual DIF funds reports and provide much needed additional transparency into how DIF funds are managed and spent.

Build Better SD - A Question of Equity v. Equality

Though questions of fairness for underserved communities drove the City to change its policy, not everyone is on board with the new framework.

While the City of San Diego works out the details by which it decides which projects get prioritized to align with the *Build Better SD* initiative, many communities of San Diego are not happy with the prospects that DIF funds collected on development in their neighborhoods might be used to fund infrastructure projects in other parts of the City.

Due to the current wide variety of existing community-specific fees, the new Citywide fees will be a flat-fee regardless of the area in which the development is happening. This will result in fee increases in some communities and fee decreases in others. This flat-fee plan is hoped to encourage the construction of new homes in line with the City's housing goals and facilitate the creation of fair housing opportunities in high resource areas. That goal also remains to be seen.

For communities where the new Citywide DIFs for Fire-Rescue, Library, and Mobility are lower than the community-specific DIFs, the new fees started Oct. 21, 2022. For communities where the Citywide DIFs will be higher than the community specific DIF, the new Citywide

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[61] *California Public Law Report, Insight And Commentary On Public Law, New Restrictions on Development Impact Fees on Housing*, Colantuono & Margolin, November 29, 2021, https://www.californiapubliclawreport.com/2021/11/new-restrictions-on-development-impact-fees-on-housing/#_ftn20
[62] California Department of Housing and Community Development, https://www.hcd.ca.gov/

DIF will go into effect July 1, 2023. It is anticipated that it will take time for four new DIF accounts to collect any meaningful balances to fund any infrastructure projects.

According to the City's website: "Inequitable planning policies and the lack of equitable funding tools have resulted in significant disparities in funding for parks, libraries, public streets, and other public spaces. Under the old structure, funds were locked into place by community boundaries [meaning there were different neighborhood funds]. This resulted in wealthier communities receiving more infrastructure investments, while traditionally disadvantaged communities received significantly less funding for these spaces and services."[63]

This is because most of the money, in the old DIF structure, was collected by the City's northern and coastal communities, partially because they experienced more growth than older "built-out" communities. These same northern and coastal communities also tend to be among the wealthiest neighborhoods in San Diego adding to claims of inequity.

"There are significant infrastructure needs across the City and [the current DIF fund balances] were unable to be spent within that old structure in areas with the greatest need. Community funds were insufficient to fund existing planned projects. *Build Better SD* will help fund public spaces and facilities faster and more efficiently by expanding to a Citywide model." [64]

"[*Build Better SD*] prioritizes equitable investments in infrastructure in the areas with the greatest needs, [and] reverses structural inefficiencies and racism inherent in the City's existing development impact fee funding structure." [65]

Proponents say the old framework has prevented improvements in historically underserved areas, often referred to as "communities of concern," from receiving much-needed funding. Critics of *Build Better SD* claim it's unfair to take money, raised in one community, and give it to another. Communities seeing a lot of development need the money to help provide infrastructure to serve new residents and businesses. After all, this is why the Mitigation Fee Act was enacted and how the City designed the current DIF structure.

However, with the millions of dollars in impact fees sitting in these old accounts, the question becomes: who has received the benefit from these collected fees? Funds sitting idle aren't benefiting any communities. In some cases, older communities are now built out and the monies sitting in their funds may never be spent for their original purpose.

Another critical question is: what happens to the $511.5M residing in the current community lockbox accounts? City officials claim that there's good news for the communities with balances of funds sitting in their respective "lockbox," in that the new DIF structure will

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[63] City of San Diego, *Build Better SD*, https://www.sandiego.gov/buildbettersd
[64] ibid
[65] ibid

allow the City to use the new fees raised Citywide to “top off” the community funds so projects can move forward.

The Dilemma

Unfortunately, for older San Diego communities with DIF/FBA based fund balances the real issue revolves more around the need for more maintenance and repair of existing infrastructure, e.g., street and road repaving, widening and other improvements, than the addition of new infrastructure projects. These communities have already absorbed the impact of any new development that may have happened years, or decades ago.

California Government Code § 66001(g)[66] addresses the use of DIF funds for the “maintenance” of existing facilities: “A fee shall not include the costs attributable to existing deficiencies in public facilities [this includes existing streets and roads], but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan.” Experts agree this is vague wording and adds to confusion over how to effectively spend the remaining balances.

The Future of Legacy DIF/FBA Community Lockbox Funds

The *IBA Review of the FY 2024-2028 Five-Year Capital Infrastructure Planning Outlook*[67] reveals the City’s projected capital infrastructure needs, available funding, and the funding gap over the five-year CIP Outlook period of FY 2024 to FY 2028.
The CIP Outlook estimates the City’s total capital needs of $9.75 billion, and projected funding availability to support these needs at $4.58 billion. This results in a $5.17 billion funding gap for the City’s General Fund. (Figure 5)

[66] California Government Code Title 7 – Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, § 66001(g), https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

[67] IBA Review of the FY 2024-2028 Five-Year Capital Infrastructure Planning Outlook, IBA Report Number: 23-03, February 10, 2023, https://www.sandiego.gov/sites/default/files/22-32_iba_review_of_the_mayors_fy_2024-2028_five-year_financial_outlook_complete_rpt.pdf

	2016-20	2017-21	2018-22	2019-23	2020-24	2021-25	2022-26	2023-27	2024-28
Funding Gap	$1.71	$1.39	$1.27	$1.58	$1.86	$2.16	$3.02	$4.32	$5.17
Available Funding	$2.16	$2.85	$3.03	$2.79	$3.76	$3.87	$3.92	$4.12	$4.58

Figure 5: FY 2024 – FY 2028 Total Infrastructure Needs, Funding and Gap

The Grand Jury believes the citizens of the City of San Diego deserve to know where, when, and how these residual (legacy) lockbox DIF funds are to be used, including whether the funds are being used directly in the community they were earmarked for. It is intuitive that with the $5.17 billion funding gap in infrastructure needs the City is facing the existing DIF/FBA account balance of more than $511M could go a long way to contribute to solving those needs.

Key to ensuring the DIF/FBA funds efficiently and effectively contribute to relieving the City's infrastructure needs requires that all existing DIF/FBA funds are supported by an updated and accurate nexus study report.

In reviewing nexus studies of other cities in California, the Grand Jury concluded the City of San Diego DIF Nexus Report may not be in strict compliance to the MFA requirements in the following areas:

- Identification of all sources and amounts of funding anticipated to complete financing in incomplete projects previously identified.
- Reporting this information every five years following the deposit of funds into an impact fee account.
- Identification of projects that may not be built within a reasonable timeframe because the required nexus could be eroded.

- Clarification of expected timeframes for when the required improvements will be built and projected development will occur.
- Annually reporting the purpose of the DIF and the specific facilities to be financed with the DIFs.
- Annually reporting the amounts collected, expended, transferred, or loaned.
- Reporting additional details for funds that remain unexpended for five years, such as approximate construction start dates and other sources of funding for incomplete projects.

Further, in conjunction with the annual CIP budgeting process the Mayor and Council should require the planning department develop a rolling five-year plan specifically detailing the liquidation of the current DIF/FBA fund balances.

This five-year plan should include how funds collected in the new *Build Better SD* DIF accounts will be used to offset existing DIF/FBA fund balances to expedite the build-out of the existing projects. The plan must include identification of any discretionary funds that can be allocated to expedite the build out process.

Additionally, if originally identified infrastructure needs are no longer viable (do not meet the MFA nexus requirements), then the City needs to develop plans and timelines to refund collected fees per California Government Code § 66001(e).[68]

FACTS AND FINDINGS

Fact*:* A Development Impact Fee (DIF) is a levy placed on a developer for new construction projects. The fees are a set-aside to be used to finance infrastructure projects/upgrades to mitigate the effect that development has on the community**.**

Fact: The City of San Diego has collected Development Impact Fees (DIF), starting in the late 1970s.

Fact: The City of San Diego typically collects approx. $60 million per year in developer impact fees**.**

Fact: Impact Fees are assessed throughout the City of San Diego employing two types of methodologies; Facilities Benefit Assessment (FBA) and Development Impact Fees (DIF).

Fact: Prior to *Build Better SD* collected DIF fees went into community specific neighborhood accounts.

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[68] California Code Title 7 – Planning and Land Use, Division 1, Planning and Zoning, Chapter 5, Fees for Development Projects, § 66001(e), https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article=

Fact: Existing legacy accounts must be spent in the communities in which they were collected and for a specific capital need.

Fact: FBA fees provides up to 100% of funds for needed public facilities projects**.**

Fact: DIF fees typically provide only 7-10% of funding needed for public facilities.

Fact: DIF funds are constrained by California Government Code § 66000-66025, (Mitigation Fee Act of 1987) as to how and where they can be spent.

Fact: Fees cannot be used for "upkeep or maintenance" of existing infrastructure and cannot be shared across neighborhood lines.

Fact: The City of San Diego DIF program was adopted into San Diego Municipal Code §142.0640 in 1989.

Fact: The latest Development Impact Fees Funds Report, for the Fiscal Year Ending June 30, 2022, was issued March 3, 2023.

Fact*:* There is a current combined total of approx. $511.5 million in unspent funds in the different neighborhood "lockboxes" across the City of San Diego.

Fact: Each fiscal year the City of San Diego develops a Capital Improvement Plan (CIP) with includes all projects to be funded and undertaken by the City.

Fact: The City of San Diego develops a rolling Five-Year Capital Infrastructure Planning Outlook to identify all current and future capital needs and available funding within the five-year outlook period.

***Finding 1*:** The City of San Diego's Five-Year Capital Infrastructure Planning Outlook does not address the liquidation of DIF/FBA account balances and identify the specific capital projects that will be undertaken during the outlook timeframe.

Fact: According to the Independent Budget Analysis (IBA) report on the FY 2024 – FY 2028 Five-Year Capital Infrastructure Planning Outlook, the City anticipates an additional $323M in Facility Benefit Assessment (FBA) and Development Impact Fee (DIF) revenue over the outlook period.

Fact: For a DIF/FBA funded project to be included in the annual CIP plan, the project must be included in a community's Public Facilities Financing Plan (PFFP) or Impact fee Study (IFS).

Fact: A community's Public Facilities Financing Plan (PFFP) or Impact fee Study (IFS) is derived from each Community Plan.

Fact: Each Community Plan consists of specific proposals for future land uses and public improvements in each community. A community plan is part of the City of San Diego's General Plan.

Fact: The General Plan is the composite master plan for development throughout the City of San Diego and is inclusive of the needs of all community plans.

Fact: There are community plans (and associated PFFP/IFS) that have not been updated within the last five years to accurately reflect the current infrastructure needs for which past DIF/FBA funds were collected.

Fact: DIF/FBA funds are meant to implement the needs of each community to ensure the impact of new development is mitigated through appropriate DIF/FBA fees.

Fact: The City of San Diego's Planning Department receives recommendations for projects eligible to be funded by DIF/FBA funds from the applicable City departments.

Fact: City of San Diego Council Districts also provide input into which projects are to be funded within their districts.

Fact: The final list of Capital Improvement Projects (CIP) is reviewed by the Capital Improvements Program Review and Advisory Committee (CIPRAC).

Fact: CIPRAC, as outlined in the City Council Policy 800-14,[69] is a formal committee that reviews proposed CIP plans from a Citywide perspective, providing City Council and the Mayor with proposed CIP budget recommendations and CIP project prioritization recommendations.

Fact: Final projects included in the annual CIP are chosen at the discretion of City Council and the Mayor.

Fact: The Mitigation Fee Act[70] is codified in California Government Code § 66000-66006.

Fact: California Government Code § 66006 "requires local agencies to adopt "five-year findings," accounting for Development Impact Fee (DIF) proceeds that are held unexpended[71] for more than five years.

Fact: The five-year findings are referred to as a Nexus Report.

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[69] Prioritizing Capital Improvement Program Projects Policy, No: 800-14, December 16, 2022, https://docs.sandiego.gov/councilpolicies/cpd_800-14.pdf

[70] Government Code, Title 7, Planning and Land Use, Division 1. Planning and Zoning, Chapter 5, Fees for Development Projects, § 66000 - 66008 https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=7.&part=&chapter=5.&article

[71] Unexpended Funds means any funding not actually expended or committed for the purposes specified.

Fact: The MFA Nexus report requirements include.

- Identify the purpose to which the fee is to be applied.
- Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.
- Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements.
- Designate the approximate dates on which the funding is expected to be deposited and identify all sources and amounts of funding anticipated to complete financing incomplete projects previously identified.
- The City is required to report this information every five years following the deposit of funds into an impact fee account.
- Projects that may not be built within a reasonable timeframe because the required nexus could be eroded.
- Cities pick a timeframe within which can be reasonably sure that the required improvements will be built, and projected development will occur into the appropriate account or fund.
- Annually report the purpose of the DIF and the specific facilities to be financed with the DIFs.
- Annually report the amounts collected, expended, transferred, or loaned.
- Report additional details for funds that remain unexpended for five years, such as approximate construction start dates and other sources of funding for incomplete projects.

Fact: California Government Code § 66001, subdivision (d)(2) further provides: "If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund.

Fact: Each Fiscal Year the San Diego City Council reviews and accepts (via Council Resolution) the Development Impact Fees Annual Report, which includes the Nexus Report for funds collected over five years old.

Fact: The City of San Diego Development Impact Fees Funds Report for the Fiscal Year Ending June 30, 2022, shows $127,817,447 in unexpended funds greater than five years old.

Fact: San Diego City Council approved the *Build Better SD* initiative, effective October 21, 2022.

Fact: *Build Better SD* creates four new Citywide DIF fund accounts for; Parks, Fire-Rescue, Library, and Mobility.

***Finding 2*:** *Build Better SD* will facilitate the City of San Diego earmarking and spending the newly collected funds anywhere in the City, not just within the boundaries in which they are collected.

RECOMMENDATIONS

The 2022/2023 San Diego County Grand Jury recommends that City Council and Mayor of the City of San Diego act to:

23-52: **Evaluate whether the City is in strict compliance with the requirements of the Mitigation Fee Act Nexus reporting, per California Government Code § 66001(d)(1), for fund balances greater than five-years old.**

23-53: **Request an independent financial and performance audit of the City of San Diego's management and reporting of the DIF/FBA funds to ensure the City is in compliance with California Government Code § 66001(e) reporting requirements.**

23-54: **Develop a standardized nexus accounting and reporting format with respect to the legacy DIF/FBA structure and the new *Build Better SD* Citywide DIF structure per California Government Code§ 66001(d)(1) and the additional requirements of AB602. The Nexus report should comply strictly with the Mitigation Fee Act requirements, to include:**

- **Identify the purpose to which the fee is to be applied.**
- **Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.**
- **Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements.**
- **Designate the approximate dates on which the funding is expected to be deposited into the appropriate account or fund.**
- **Annually report the purpose of the DIF and the specific facilities to be financed with the DIFs.**
- **Annually report the amounts collected, expended, transferred, or loaned.**
- **Report additional details for funds that remain unexpended for five years, such as approximate construction start dates and other sources of funding for incomplete projects.**

The AB 602 additional requirements:

- **Identify the existing level of service for each public facility studied.**
- **Identify the proposed new level of service the fee will fund.**
- **Explain why the new level of service is appropriate.**

23-55: **Post the rolling five-year DIF plan on the City of San Diego's website with easy access for the public to review the plan as it affects each individual community.**

23-56: **Encourage all Community Planning Groups to review their associated Community Plans, and associated PFFP and/or IFS, for accuracy and completeness to ensure the plans represent the future infrastructure needs of each community.**

23-57: **Adopt a method to identify infrastructure projects that are no longer needed (do not have a viable nexus) for which DIF/FBA funds have been on deposit longer than five years.**

23-58: **Refund all DIF/FBA funds the City of San Diego has held longer than five years for which a timely Nexus cannot be established in accordance with California Government Code § 66001(e).**

23-59: **Develop a detailed rolling five-year DIF/FBA funds liquidation plan for each of the legacy community "lockbox" accounts detailing how the City of San Diego shall augment the funds balances in these current accounts to effect completion of the infrastructure projects for which the fees were originally collected. The plan should include the Mitigation Fee Act requirements to:**

- **Identify the purpose to which the fee is to be applied.**
- **Demonstrate a reasonable relationship between the fee and the purpose for which the fee is charged.**
- **Identify all sources and amounts of funding anticipated to complete the financing of incomplete improvements.**
- **Designate the approximate dates on which the funding is expected to be deposited into the appropriate account or fund.**
- **Report additional details for funds that remain unexpended for five years, such as approximate construction start dates and other sources of funding for incomplete projects.**

23-60: **Post the rolling five-year legacy DIF/FBA liquidation plan on the City of San Diego's website with easy access for the public to review the plan as it affects each individual community.**

23-61: **Identify new ways to educate and engage the public regarding development impact fee collection, including how the City of San Diego uses these funds to improve all neighborhoods within the City.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors. Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
   1. The respondent agrees with the finding.
   2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
   1. The recommendation has been implemented, with a summary regarding the implemented action.
   2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
   3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
   4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor. (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
City of San Diego, Mayor	**23-52 to 23-61**	**8/28/2023**
City of San Diego, City Council	**23-52 to 23-61**	**8/28/2023**