

CLIENT NEWS BRIEF

Local Agency Ordered to Refund More Than Ten Million Dollars for Failure to Comply with Developer Fee Accounting Requirements

A recent court decision underscores the importance of local agencies complying with accounting requirements related to the collection and use of developer fees. In *Daniel Walker v. City of San Clemente* ((August 28, 2015) 2015 Cal.App. Lexis 757 (*Walker*)), the Court of Appeal affirmed a trial court decision finding the City's accounting and related findings to be inadequate, and requiring that all unspent developer fees be refunded with interest. This case is a reminder that local agencies must not only meet procedural requirements, but must also make findings that are more than mere conclusions.

Local agencies including cities and school districts are authorized to impose fees on development projects in order to defray the cost of new or additional public facilities that are needed to serve those developments. When establishing such a fee, the local agency is required to identify both how it will use the fee and the relationship between the fee's use and the developments on which the fee is imposed. Upon receipt by the local agency, developer fees must be deposited in a separate account or fund in a manner to avoid commingling the fees with other revenues and funds of the agency.

The Government Code contains explicit accounting requirements related to developer fees. The first is an annual obligation that requires the local agency, within 180 days of the end of the agency's fiscal year, to make available to the public a report concerning each account that contains funds received from developer fees. The accounting must include specified information including the type and amount of fee in the account, the beginning and ending balance, the amount collected and interest earned, an identification of public improvements on which fees were expended and the amount expended, the approximate date by which construction of a public improvement will commence if sufficient funds have been collected, inter-fund loan information, and any refunds made. The annual accounting information must be reviewed at the next regularly scheduled public meeting that is at least 15 days after the information is made public. (Gov. Code, §§ 66001, *et seq.*)

In addition to the annual accounting described above, agencies imposing developer fees are also required to make the following findings regarding any unexpended funds at five-year intervals from the first deposit into the developer fee account:

- Identify the purpose to which the fee is to be put;
- 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 of incomplete improvements; and
- Designate the approximate dates on which the funding described above is expected to be deposited into the appropriate account or fund.

(Gov. Code, § 66006.) The penalty for noncompliance with the five-year accounting requirements can include a mandatory refund of all unexpended developer fees.

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In *Walker*, the City of San Clemente collected nearly \$10 million in beach parking impact fees and accrued interest over a 20-year period. The City spent \$350,000 of these funds to purchase a vacant parcel of land, but did not construct parking facilities there. The plaintiffs in the case alleged that the City's five-year accounting failed to make the specific findings required above, and both the trial court and the Court of Appeal agreed. The Court of Appeal emphasized that the City had adopted mere conclusions, rather than reasoned findings.

With regard to the required finding of a reasonable relationship between the unexpended fee and the purpose for which the fee was charged, the Court held that the City's finding failed to discuss the relationship between the nearly \$10 million balance in the fee account and the purpose for which the fee was established, and also failed to demonstrate a reasonable relationship between the unexpended fees and their purpose. The City's finding failed to say anything about any impact that residential development had on the City's beach parking in the 20-year period since the City began collecting fees, the current condition of the City's beach parking, the status of any improvements identified when the City established the fee, or what the City had done in the last 20 years or future plans for public beach parking.

The Court also held that the City failed to make the required finding identifying the sources and funds anticipated to complete financing for incomplete beach parking improvements. With regard to this finding, the City's accounting stated that "This funding source is anticipated to be sufficient to complete the financing of identified improvements." The Court held that this finding was acceptable to the extent it limited the sources of funding for beach parking improvements to the beach parking impact fee, but that it failed to give sufficient detail. The Court confirmed prior law that the City could have generally identified by type or category the public facilities it intended to acquire or construct, and that specific construction or improvement plans were not required.

For the last required finding concerning designating the approximate dates when the City anticipated receiving funding for incomplete improvements, the City's accounting stated "Not applicable." The Court found this to be an inadequate conclusion.

Based on the Court's holding that the findings in the five-year accounting were inadequate, the Court upheld the trial court's judgment ordering the City to refund approximately \$10.5 million in unexpended impact fees and accrued interest to the current property owners on whom the fees were imposed.

It is important for local agencies to complete their annual and particularly their five-year accounting obligations, and to make sure that those accountings contain the proper information and that there are findings made as required by law. The accounting requirements are often particularly challenging for school districts, as the requirements often do not fit neatly with how such districts operate. It is often advisable for local agencies to consult with their legal counsel regarding adopting fee studies, accounting reports, and necessary findings prior to taking such actions, to ensure compliance with the controlling laws.

School districts may be interested in Lozano Smith's publication, [Developer Fee Handbook for School Facilities: A User's Guide to Qualifying for, Imposing, Increasing, Collecting, Using and Accounting for School Impact Fees in California](#). The handbook is designed to assist school districts in dealing with numerous developer fee issues and can help reduce legal costs by providing comprehensive information regarding California law and the process for school impact fees. The handbook contains procedures, timelines, checklists, and forms related to developer fee accounting. At this time, Lozano Smith is continuing to make the handbook available to school districts at no present cost. The handbook is updated regularly; school districts that order or have previously ordered the handbook will be sent the updates at no charge. For more information on the Developer Fee Handbook, or to order a copy, click [here](#).

If you have any questions regarding the *Walker* case or developer fee issues in general, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.