City of Culver City, California

City Council Agenda Item Report

Meeting Date: 08/25/08	Item Number: A-7
AGENDA ITEM: Discussion of Various Development Related Taxes and Impact Fees in the Culver City Municipal Code.	
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Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Culver City Chamber of Commerce and Master E-Mail Notification List (08/20/08)	
Department Approval: Sol Blumenfeld (08/06/08)	City Attorney Approval: Carol Schwab (by H. Baker) (08/20/08)
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (08/20/08)	City Manager Approval: Jerry B. Fulwood (08/20/08)

RECOMMENDATION:

Staff recommends the City Council receive the report on development related taxes and impact fees and direct staff as deemed appropriate.

BACKGROUND:

On May 19, 2008, City Council directed staff to return with information on development taxes and impact fees currently assessed by the City. Subsequently, staff researched and gathered information on the City's current impact fees and tax rates, the last time that the fee or rate was changed, and if the fee or tax is subject to Proposition 218 (i.e. if an increase to the fee/tax requires approval by the voters). An informational memo containing this information was provided to City Council on June 5, 2008.

On June 23, 2008, City Council directed staff to agendize a discussion item related to development taxes and impact fees.

DISCUSSION:

In order to distinguish the different types of taxes and fees in the Culver City Municipal Code that developers may be subject to, staff has grouped them into four distinct categories:

1. Development Taxes – Taxes on new development which can be used just like any other general purpose tax (e.g. property and sales tax) to pay any lawful

expenditure of the City, including public safety services, infrastructure maintenance, City administration, etc. Culver City's development taxes are:

a. Commercial & Industrial Development Tax
b. Condominium Tax

2. Development Impact Fees – Impact fees are imposed specifically to mitigate an impact on the community that will result from the development. The amount of the fee is related to the magnitude and cost of the impact. Culver City's development impact fee is:

   a. New Development Impact Fee

3. Development In-lieu Fees – Development In-Lieu Fees are imposed to preserve specific characteristic and quality of life issues in a community. A community may establish special requirements that must be met by developers in order to maintain a certain community characteristic or quality of life. With these fees, the developer is typically given the option to meet the requirements within the scope of the development, or to pay an in-lieu fee into a special fund controlled by the City that can only be used for specific purposes. The amount of this in-lieu fee is directly related to the cost of providing or preserving the required element. Culver City currently has the following in-lieu fees:

   a. Art in Public Places Program
   b. Parkland In-Lieu Fees (aka Quimby fees)
   c. Solar Photovoltaic In-Lieu Fee

4. User Fees – User Fees are charged by the City to recover the cost of providing certain services that are used by a smaller portion of the community and do not necessarily impact the community as a whole. The amount that can be charged as a user fee is no more than what is directly related to the City's cost for providing the particular service (per Proposition 218). Information on user fees and charges was considered and adopted by City Council separately as part of the annual budget process and is not included as part of this agenda report.

The following sections provide basic information about each tax or impact fee, including the CCMC section authorizing the tax/fee, when the tax/fee was established, how the tax/fee is calculated, and whether increasing the tax/fee is subject to voter approval per Proposition 218.

In addition to the taxes and impact fees described herein, developers are also subject to any number of specific project mitigation measures as part of the conditions of approval. These are typically project specific and vary based on the project's use, density, location, height, etc. Examples of these mitigation measures, which shift the cost to the developer, include required infrastructure improvements, specific traffic mitigating measures, and/or community benefits.

Development Taxes

The City's **Commercial & Industrial Tax** (CCMC §3.08.800 et seq.) was established in 1990 and is imposed on the development, construction, reconstruction, or remodeling of all commercial and industrial structures or properties in the City. If the total building valuation, as determined by the Building Official, is less than $250,000, then the tax is $25. If the total building valuation, as determined by the Building Official, is $250,000 or more, then the tax is $25 for the first $250,000 in valuation plus 1.5% of the portion of the building valuation in excess of $250,000.

For example, if a building valuation is determined by the Building Official to be $1,000,000, then the Commercial & Industrial Tax due would be $25 for the first $250,000 plus 1.5% of $750,000 (i.e. $11,250), for a total tax of $11,275. No tax is imposed for reconstruction or remodeling of a building in connection with earthquake rehabilitation.

This tax is subject to Proposition 218, which means that any increase to any portion of the tax rate (i.e. the $25 flat rate or the % of valuation) requires approval by a majority of voters at a general municipal election.

The City's **Condominium Tax** (CCMC § 3.08.600, et seq.) was established in 1973 and is imposed on the development and construction of all condominium units, whether new construction or conversion of an existing building. The current tax rate is $1,000 per planned saleable unit.

As staff researched the condominium tax, it was discovered that this tax has not been applied since the mid-1980's. Staff has been unable to find specific documentation explaining why the City discontinued charging this tax. However, records indicate different condominium conversions which took place during that time period (e.g. Heather Village and Raintree) requested, and were granted, relief from paying this tax.

Staff believes that one possible reason that the condominium tax has not been applied is because one justification for the need for the Condominium Tax is to provide open space. As is explained in more detail in later sections, the City also imposes a Parkland fee to provide park and open space. It may have been the desire of a previous Council not to impose both the Condominium Tax and the

Parkland Fee. However, one fundamental difference between the two is that the Condominium Tax is a general purpose tax and can be used for all City services, including infrastructure maintenance, public safety, and open space. The Parkland fees are an impact fee that can only be used for park land acquisition and capital improvements to maintain City parks.

Since records from the mid-1980's are incomplete and difficult to find, and there are very few staff members with adequate institutional memory, this is staff's best guess as to the reasoning for not imposing the Condominium Tax. Despite the fact that the City has not been collecting the tax, it is within the City's authority to resume collecting this tax again, effective immediately, upon Council's direction to do so.

This tax is subject to Proposition 218, which means that any increase to the tax rate above $1,000 per saleable unit requires approval by a majority of voters at a general municipal election.

Impact Fees

The City charges a **New Development Impact Fee** (CCMC § 15.06.005 et seq.), established in 1983, to provide a method for financing necessary traffic-related public works capital improvements. The fee is $1.00 per square foot of non-residential new development in excess of 5,000 square feet. Fees are deposited into the New Development Impact Fund and may only be used only for street improvements, traffic controls and traffic management projects which are made necessary by the development.

However, the following exceptions are provided for in the CCMC and are therefore exempt from paying the fee:

- Reconstruction of any building destroyed or damaged by fire, explosion, natural catastrophe or Act of God to the extent that the reconstruction does not add to the floor area of the structure which existed prior to its being damaged or destroyed, or where such additional floor area is less than 5,000 sf; or
- Construction of parking structures, parking facilities and parking areas, but not including vehicle display, repair or inventory storage space within a building; or
- Construction of mechanical equipment penthouses and structures; or
- Any development which is the subject of an Owner Participation Agreement (OPA) or Disposition and Development Agreement (DDA) within the Culver City Redevelopment Agency wherein there is established an alternative method for

mitigating the contemplated or calculated traffic impacts of the new development.[1]

This fee is not subject to Proposition 218. The fee amount has not been increased since 1983. It is possible to increase this fee based upon the Consumer Price Index (CPI), or some other relevant cost index, since 1983; or a more accurate cost study could be performed by a consultant (see fiscal analysis section for an illustration of the fee if it were to be increased by CPI).

In-Lieu Fees:

The City established an **Art in Public Places Program** (APPP) (CCMC § 15.06.100 et seq.) in 1988 to preserve and enhance the artistic character of the community. The APPP is imposed on all new residential development of more than four units and all commercial, industrial and public building development projects with a building valuation exceeding $500,000. Additionally, interior and exterior modifications and additions, remodeling of existing residential buildings of more than four units, and all remodeling of existing commercial, industrial and public buildings when the remodeling has a valuation exceeding $250,000, is subject to the APPP.

Earthquake rehabilitation required by the CCMC for seismic safety and residential units covenanted for low-mod income households or for senior citizens are excluded from paying the fee.

The APPP requires that the applicant provide approved art work with a cost equal to 1% percent of the total building valuation, excluding land acquisition and off-site improvement costs. In-lieu of placement of an approved Art Work, the applicant may choose pay to the City Art Fund an amount equal to the required allocation (i.e. 1%).

This fund is not subject to Proposition 218. To increase the 1% fee, a study should be conducted to show the need to increase the fund to mitigate the funds' purposes stated in CCMC §15.06.100. Use of funds paid into the Art Fund are restricted by CCMC §15.06.110.

The City has also established **Parkland In-Lieu fees** that require residential developers (not required for commercial/industrial developers) to either provide dedicated park open space or pay an in-lieu fee equal to the cost of providing the required amount of park open space. The amount of required park open space is determined using the project's "density factor," which is calculated using the most recent federal census and is equal to the average number of persons per household

[1] Most new large developments in the City are within the Redevelopment Project Areas. Therefore, traffic mitigation or street improvements are covered by the OPA's and DDA's.

depending upon the type of construction: Single-family detached unit; Single-family attached dwelling unit; Multi-family residential development with four or fewer units; Multi-family residential developed with more than four units; or Mobile homes. The stated goal for Culver City is three acres of park area for every one thousand residents.

There are two different versions of the parkland requirement, one for new residential developments of more than one unit that does not require a subdivision (CCMC § 15.06.300 et seq. established in 1973) and one for new residential developments or conversions that require subdividing land (CCMC § 15.10.600, et seq. established in 1969). There are slightly different requirements depending on the size of the project and whether or not a subdivision is required; however, the basic principals are similar in both versions.

When a fee is paid in lieu of or in addition to providing the required amount of parkland, the amount of the fee is the fair market value of the amount of land that is required. The fair market value is determined by a written appraisal report provided by and paid for by the applicant and prepared by an appraiser approved by the City.

Parkland In-lieu fees are deposited into the Park Facilities Fund and may be used solely for the acquisition of new parkland and rehabilitation of existing community parks and recreational facilities. Funds cannot be used for normal park maintenance or personnel costs.

As part of the City's Parks Master Plan Update, the Parkland requirement and in-lieu will be reviewed by the consultant currently working with PRCS staff, which may include possible recommendations to update, expand or improve the parkland ordinance.

This fee is not subject to Proposition 218 and residential developments and subdivisions containing units covenanted for low-mod income households or senior citizens are exempt from the parkland requirement.

Recently, the City adopted a **Solar Photovoltaic In-Lieu Fee** (CCMC § 15.02.100, et seq.). The Solar Photovoltaic Ordinance requires all new buildings, additions, and major renovations to existing buildings (where such renovation is equal to 50% of the valuation of the existing building) of 10,000 sf or more of gross floor area be equipped with a 1kw solar photovoltaic system for each 10,000 sf of gross floor area, or fraction thereof. An applicant unable to install the required solar photovoltaic system must pay an in-lieu fee in an amount equal to the cost of a system installed in a comparable project. These fees are deposited into a Solar Photovoltaic Fund and appropriated and disbursed only for solar photovoltaic designs and installations on City buildings or facilities.

This requirement does not apply to one- and two- family residences, parking structures, garages and renovations or additions to existing buildings and is not subject to Proposition 218.

Looking forward, the Community Development, Public Works, and Transportation Departments are working on developing and implementing a **Regional Trip Mitigation Fee** that would apply to qualifying new development and would be based upon Los Angeles County's Congestion Management Program. The purpose of the regional trip mitigation fee is to fund regional traffic improvements within the sub-region encompassing the Westside Los Angeles Council District Office and the County. The development of this fee is still in the concept phase. City Council will receive more information as it is developed with the cooperation of affected agencies and jurisdictions.

Attachment 1 provides City Council with a summary comparison of a few surrounding cities that have Impact and In-Lieu fees contained in their municipal codes. Attachment 2 provides the same information in more detail. The summary shows that Culver City is, for the most part, on par with the comparison cities as it relates to number, type and amount of taxes and impact fees that developers are subject to.

As previously mentioned, increases in the Commercial & Industrial Tax or Condominium Tax would require voter approval at the next general municipal election (April 2010). Increases in the Impact or In-Lieu fees could be approved by the Council with further study.

FISCAL ANALYSIS:

The table below shows a 5-year history of actual receipts for each tax/fee and current receipts (through May 31, 2008).

	Fiscal Year Receipts -- 5-year History					As of 5/31/08
Description	**2002-03**	**2003-04**	**2004-05**	**2005-06**	**2006-07**	**2007-08**
Commercial Industrial Develop Tax*	$283,380	$120,242	$225,140	$1,528,241	$558,648	$2,162,725
Condominium Tax	n/a	n/a	n/a	n/a	n/a	n/a
New Development Impact Fee	$4,217	$43,508	$1,950	$3,958	$1,950	$250,002

Art in Public Places In-Lieu Fee	$166,623	$154,507	$107,648	$53,135	$307,342	$24,010
Parkland In-Lieu Fee	$52,910	$41,153	$45,812	$4,215	$63,152	$92,403
Solar Photovoltaic In-Lieu Fee	n/a	n/a	n/a	n/a	n/a	n/a
Total	$507,130	$359,410	$380,550	$1,589,549	$931,092	$2,529,140

*The large spikes in FY 2005-06 and 2007-08 revenues are related to Symantec and Westfield Mall expansion, respectively.

Additionally, the following calculation shows the New Development Impact Fee if it were to be adjusted annually since its inception in 1983 by the Consumer Price Index – All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County area.

$$\text{CPI-U Adjusted fee} = \$1.00 \text{ per sf} * \frac{226.7 \text{ (Index as of May 2008)}}{99.1 \text{ (Index as of Dec. 1983)}} = \mathbf{\$2.28 \text{ per sf}}$$

If the New Development Impact Fee were to be adjusted by inflation, then the new fee would be increased from $1.00 per square foot to $2.28 per square foot of non-residential development over 5,000 square feet. The City of Pasadena is the only other comparison city with a New Development Impact Fee similar to Culver City's. Pasadena has a tiered charge based on the type of use ranging from $3.10 per square foot for a new industrial use to $8.62 per square foot for a new retail use (see Attachment 2 for more detail). Adjusting the New Development Impact Fee by inflation would bring Culver City more into line with Pasadena.

If the City Council directs staff to pursue a consultant to study any of the City's Impact and In-Lieu fees, there would be a cost associated with hiring a consultant to conduct such a specialized study. Although an Impact/In-Lieu fee study is fundamentally different than the user fee study conducted in 2007, staff estimates that the cost for such a study would be approximately $50,000 based on the cost to conduct the user fee study.

To add a new tax or increase any of the existing development related taxes requires approval by Culver City voters at a General Municipal Election. Adding an item to a ballot has associated staff cost and translation and printing cost which vary depending on the length and complexity of the ordinance being voted on.

ATTACHMENTS:

1. Summary Comparison of Development Taxes and Impact fees
2. Detailed Comparison of Development Taxes and Impact fees

MOTION:

That the City Council:

Receive the report and direct staff as deemed appropriate.