



THE CITY OF SAN DIEGO

November 14, 2023

Honorable Judge Michael T. Smyth
Presiding Judge
San Diego Superior Court
1100 Union Street, 10th Floor
San Diego, CA 92101

Re: "City of San Diego Development Impact Fees - What's the DIF?"

Honorable Judge Smyth,

Pursuant to California Penal Code Section 933.05(c), the City of San Diego provides the attached response from the City Council and Mayor to the applicable findings and recommendations included in the above referenced Grand Jury Report.

If you require additional information, or have any questions, please contact Luz Anaya Luna, Director of Legislative Affairs, at lanayaluna@sandiego.gov.

Sincerely,

Handwritten signature of Sean Elo-Rivera.

Council President Sean Elo-Rivera

Handwritten signature of Mayor Todd Gloria.

Mayor Todd Gloria

Enclosures:

1. City of San Diego Response to San Diego County Grand Jury Report Titled: "City of San Diego Development Impact Fees - What's the DIF?"
2. City Council Resolution R-315192

**City of San Diego Response to
San Diego County Grand Jury Report Titled
“City of San Diego Development Impact Fees -
What’s the DIF?”**

Pursuant to California Penal Code section 933(c), the City of San Diego Mayor and City Council provide the following responses to the findings and recommendations which are included in the above referenced Grand Jury Report.

FINDINGS 01 THROUGH 02:

Finding 01: *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.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

The Five-Year Capital Infrastructure Planning Outlook (Five-Year CIP Outlook) is a programmatic level report for high level planning purposes of capital needs and viable programmatic funding types. In the Five-Year CIP Outlook, predictable funding sources, including DIF,¹ are identified as possible ways to fill program needs. The Five-Year CIP Outlook does not address specific individual projects for any asset types or individual funding sources. The annual Adopted Budget publication (Volume III, Capital Improvements Program) is the document where specific projects and funding sources are identified. Projects are not created solely to fully liquidate account balances. However, identifying the most restricted fund balances that can be appropriated to existing projects that meet the funding source restrictions is a priority in the budget process. “Liquidation” will occur as projects identified in the budget are implemented using DIF funds.

Finding 02: *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.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

The City has adopted citywide DIF for parks, mobility, fire, and library assets. There were many reasons for the adoption of these four citywide DIFs, one of which was specifically

¹ Development Impact Fees (DIF) and Facilities Benefit Assessments (FBA) are referred to as DIF throughout the City’s response. The City’s FBA Ordinance was repealed by the City Council in 2016 by San Diego Ordinance No. 20627. This repeal had little impact on the administration of the DIF and FBA fees, since all FBAs were subject to the requirements of the Mitigation Fee Act. Subsequent to the formal repeal of the FBA Ordinance, all FBAs have been collected and expended as DIFs. See San Diego Ordinance No. 20627, Section 2.

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to allow the City to more efficiently expend the funds that it collects in DIF accounts. Infrastructure investments transcend community planning area boundaries, and the new fees are intended to acknowledge that reality. For example, people that live in one community are not constrained to only using parks or libraries in their community. In fact, people regularly use infrastructure investments across the City on a daily basis. A fire engine from a fire station in one community will respond to emergencies across the City as needed, and people use the roadway network to travel all throughout the City. Having funds that serve the needs of new development across the City that are not constrained by individual community boundaries will allow the City to more efficiently expend collected funds and deliver more infrastructure citywide.

RECOMMENDATIONS 23-52 THROUGH 23-61

Recommendation 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.*

Response: The recommendation has been implemented.

Annually, the City Planning Department reviews compliance and presents findings required by California Government Code § 66001(d)(1) to City Council for adoption via annual reports. The annual reports identify the fund balances greater than five-years old and California Government Code § 66001(d)(1) requirements. Most recently, the City Council adopted findings made in the [FY 2022 Annual Report](#) on July 17, 2023.

The City has recently evaluated its reporting process and found areas where improvements can be made. The City Planning Department will work with the City Attorney’s Office, the Engineering and Capital Projects Department, and the Department of Finance to provide additional details as part of the Annual Development Impact Fees Report for Fiscal Year 2023 to provide more information related to California Government Code § 66001(d)(1)(C)-(D). The City will identify at public hearings (as required by state law) the reasonable relationship between the fees collected and the project to be funded as the transition from community to citywide DIF collection and distribution continues. Additionally, the City will identify any additional public facilities that exist under asset owning departments that may not necessarily be listed in the [CIP Project Search Tools](#) that should be included as part of the reasonable relationship as to which the fee was imposed and collected for development.

Recommendation 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.*

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Response: The recommendation has been implemented.

As mentioned in the response to Finding 02, the City adopted four new citywide DIFs. The Parks DIF was adopted in August 2021 and fully phased in beginning July 1, 2022; and the Mobility, Library, and Fire DIFs were adopted in August 2022 and fully phased in as of July 1, 2023. For citywide DIFs, it would be premature to audit a program that just recently became effective within the past year. The City will consider another audit of its DIF funds and processes once there is sufficient data under the recently revised programs for study and review.

Additionally, there are projects that submitted applications prior to these effective dates that have certain protections under SB 330 and will continue to be subject to the prior, community-specific DIFs. The City prepares [annual reports](#) on these DIFs (see response to Recommendation 23-52) that are adopted by the City Council. These reports include information on refunds, if any, made pursuant to section 66001(e), in compliance with California Government Code § 66006(b)(1)(H).

The City Planning Department has made a request to the City of San Diego Office of the City Auditor to conduct an independent financial and performance audit of the City’s management and reporting of the community-based DIF/FBA funds subject to California Government Code § 66001(e) requirements.

Recommendation 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:

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- *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.*

Response: The recommendation has been implemented.

Each community-specific DIF is expended in accordance with a Public Facilities Financing Plan or Infrastructure Fee Study, which serve as the nexus studies for those community-specific DIFs in accordance with California Government Code § 66001(d)(1) and AB 602. Each new citywide DIF—mobility, fire, library and parks—has its own citywide nexus study. The Public Facilities Financing Plans and Infrastructure Fee Studies can be viewed here: <https://www.sandiego.gov/planning/work/public-spaces/plans>. The citywide DIF nexus studies can be viewed here: <https://www.sandiego.gov/buildbettersd>. City Planning staff brings forward the Annual DIF report to City Council each year as required by the Mitigation Fee Act and includes the information identified in the recommendation.

Recommendation 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.*

Response: The recommendation will not be implemented because it is not warranted.

The City does not post a rolling five-year plan only for DIF. However, the City reports project funding plans in Volume III - Capital Improvements Program – of the Adopted Budget, where DIF is one of the funding sources.

Volume III includes the timeline, funding sources, and five-year funding plans for identified projects. The [CIP Project Search Tools](#), managed by the City’s Engineering & Capital Projects Department, provides Project Information Details pages that include information on project schedules and cost, which is updated monthly. Additionally, the [Annual DIF Report](#) and its attachments provide detailed information on available fund balances, expenditures, and fees collected, along with projects towards which funds have been appropriated. The City publishes [quarterly financial summaries](#) for each impact fee fund (except for newly created citywide DIF funds) that include revenues and anticipated expenditures by each community planning area. All these documents are available on the City’s website. For DIF funds that are not appropriated to specific projects yet, the City is actively engaging communities for input on infrastructure priorities for consideration in the City’s CIP Outlook and CIP budget.

It is important to understand that the City’s CIP overall, and even individual capital projects, are funded through *many* different fund sources. Very few projects are fully funded by DIF, and many projects identified to be funded by DIF require supplemental sources to fully fund and implement the project. The Five-Year CIP Outlook process

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identifies needed infrastructure and matches potential funds to these projects in the most efficient manner possible that allows as many priority projects to be funded as possible.² It is through this comprehensive process that projects are proposed for future funding.

The annual budget review process considers funding requests for specific projects for the upcoming fiscal year and includes the identification of Council Districts and community planning areas where the projects are located. Re-creating this process for every individual funding type, including DIFs, would be inefficient and hinder the City’s ability to comprehensively address the City’s infrastructure needs since it would not look at all of the other funding sources available to fully fund a desired project. As stated under Recommendation 23-52, the City will work on improving information provided as required under California Government Code § 66001(d)(1) in coordination with the necessary City departments.

Recommendation 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.*

Response: This recommendation has been implemented.

The City previously engaged the Community Planning Groups in the development of their respective Public Facilities Financing Plans. The City Planning Department continues to encourage input from Community Planning Groups as well as other organizations and individuals with respect to projects in their communities. With the adoption of citywide DIFs collected for parks, mobility, fire, and library assets, these four nexus studies can be updated much more regularly to address community priorities. As citywide DIFs for parks, fire, and library assets are standards-based, they are adaptive to future infrastructure needs of communities. The citywide DIF for mobility has been developed to identify citywide mobility improvements that often times transcend community planning areas. The City gathers infrastructure needs and priorities of each community throughout the Five-Year CIP Outlook process, which is the blueprint of the City’s CIP budget. The [community engagement process](#) outlined in [Council Policy 000-32](#), has already been implemented and includes outreach and information gathering through a variety of methods, including but not limited to: input from community planning groups, online surveys, in-person

² The City has competing priorities for limited resources and a backlog of capital projects, and therefore cannot fully fund all projects.

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engagement events, and contributions from any other member of the public, with a goal of receiving input reflecting the demographics of the City.

Recommendation 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.*

Response: The recommendation has been implemented.

The City has implemented this recommendation through its annual community engagement and reporting processes. The City Planning Department provides details of projects as part of the annual DIF report. This report includes information on unexpended funds, including those that have not been spent for five years. In the situation where the proposed projects for which the funds were collected are no longer needed or viable, alternative projects serving the purpose for which the funds were collected are identified. Through the annual DIF report process, the City Planning Department reviews the viable nexus between the identified infrastructure projects and the DIF funds. Findings made in the Annual DIF report are reviewed and adopted by the City Council in accordance with the Mitigation Fee Act. Where the requirements for a refund are warranted, the City would comply with the substantive and procedural requirements in the Mitigation Fee Act. Additionally, through the community engagement process for identifying projects for the annual Five-Year CIP Outlook, priorities for infrastructure will be updated annually. The [community engagement process](#) outlined in [Council Policy 000-32](#), includes outreach and information gathering through a variety of methods, including but not limited to: input from community planning groups, online surveys, in person engagement events, and contributions from any other member of the public, with a goal of receiving input reflecting the demographics of the City.

Recommendation 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).*

Response: The recommendation has been implemented.

The City complies with Government Code § 66001(e), and, where the requirements for a refund are warranted, the City would comply with the substantive and procedural requirements in the Mitigation Fee Act. City staff reviews funds in accordance with Government Code § 66001(e) annually, and any findings are included in the Annual DIF Report.

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Recommendation 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.*

Response: The recommendation will not be implemented because it is not warranted.

The City does not develop a rolling five-year liquidation plan specifically for DIF. As stated in the response to Recommendation 23-55, it is important to understand that the City’s CIP is funded through *many* different fund sources. It is through the City’s comprehensive CIP process that projects are proposed for future funding. Re-creating this process for every individual funding type would be inefficient and hinder the City’s ability to comprehensively address the City’s infrastructure needs since it would not look at all of the other funding sources available to fully fund a desired project.

DIF funds are one of several funding sources that fund the overall capital needs identified in the Five-Year CIP Outlook. For DIF funds appropriated to specific projects, the annual CIP budget further identifies the funding sources for each of those projects for current and future fiscal years. “Liquidation” will occur as projects identified in the budget are implemented using DIF funds. Projects are not created solely to fully liquidate account balances. However, identifying the most restricted fund balances that can be appropriated to existing projects that meet the funding source restrictions is a priority in this budget process. With the creation of citywide DIFs for parks, fire, library, and mobility, the City plans on leveraging the citywide DIFs funds to supplement funding in community-based DIF accounts to deliver projects and to liquidate fund balances more quickly. Each project is also tracked to monitor project schedule, scope, and cost through the [CIP Project Search Tools](#), which is available on the City’s webpage. The City Planning Department also prepares an Annual DIF Report on available DIF funds, appropriations and expenditures, and fees collected annually. This information is presented to the City Council, which includes the findings required for unexpended funds on account for over five years as required by the Mitigation Fee Act.

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Recommendation 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.*

Response: The recommendation will not be implemented because it is not warranted.

See Response to Recommendation 23-59.

Recommendation 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.*

Response: The recommendation has been implemented.

The City recently implemented Council Policy 000-32, Neighborhood Input on Infrastructure Needs and Priorities; and the City Planning Department is currently leading enhanced community engagement activities for infrastructure prioritization. Input from the community helps to inform development of the City of San Diego’s annual Five-Year CIP Outlook. The Five-Year CIP Outlook is developed based on each asset-managing department’s five-year plan and identifies each department’s funding needs and the different funding sources to fund the needed infrastructure. DIF is one of the several funding sources that fund the infrastructure needed for the City of San Diego. City Planning staff engages with communities through virtual tools, such as an infrastructure priorities survey, in-person engagement events, and hosting workshops at various community events. City Planning staff will continue to research and pilot various engagement tactics to explain the infrastructure prioritization process, including the collection and allocation of DIF funds, and provide an annual report that is user-friendly and easy to comprehend.

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RESOLUTION NUMBER R- 315192

DATE OF FINAL PASSAGE NOV 06 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING THE CITY COUNCIL'S
RESPONSE TO THE 2022-2023 SAN DIEGO COUNTY
GRAND JURY REPORT "CITY OF SAN DIEGO
DEVELOPMENT IMPACT FEES - WHAT'S THE DIF?"

WHEREAS, on May 30, 2023, the 2022-2023 San Diego County Grand Jury (Grand Jury) filed a final report titled "City of San Diego Development Impact Fees - What's the DIF?" (Report) that requested a response from the Mayor and City Council, among others; and

WHEREAS, the Report included two findings and ten recommendations that are directed to the Mayor and City Council; and

WHEREAS, under California Penal Code section 933(c), within 90 days after the filing of the report, each public agency which the Grand Jury reviewed, and about which it issued the Report, must comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency; and

WHEREAS, the comments required from the Mayor and Council are due to be submitted to the Presiding Judge of the Superior Court on November 21, 2023, as the City requested and received an extension of time to respond; and

WHEREAS, the Office of the Independent Budget Analyst (IBA) has proposed a response to the Report, which is joined by the Mayor, as set forth in IBA Report No. 23-30, for Council's consideration; and

WHEREAS, on October 20, 2023, the proposed response to the Report was presented to the Active Transportation and Infrastructure Committee; and

WHEREAS, under Charter section 280(a)(1) this Resolution related to approval of the City Council's response to the Report is not subject to veto by the Mayor because this matter is exclusively within the purview of the City Council and does not affect the administrative service of the City under the control of the Mayor; and


WHEREAS, the Office of the City Attorney has drafted this Resolution based on the information provided by City staff including information provided by affected third parties and verified by City staff, with the understanding that this information is complete, true, and accurate;
NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Council approves and adopts the response to the 2022-2023 San Diego County Grand Jury Report titled "City of San Diego Development Impact Fees - What's the DIF?" as set forth in IBA Report No. 23-30, dated October 2, 2023.

BE IT FURTHER RESOLVED, that the Council President is authorized and directed, on behalf of the Council of the City of San Diego, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than November 21, 2023.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Shannon C. Eckmeyer
Deputy City Attorney

SCE:sc

10/18/2023

11/03/2023 COR. COPY

Or.Dept: Planning

Doc. No. 3450763_2

Passed by the Council of The City of San Diego on NOV 06 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 06 2023.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Cornie Patterson*, Deputy

Office of the City Clerk, San Diego, California

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