County of El Dorado

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Legislation Details (With Text)

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On agenda:	9/28/2021	**Final action:**	9/28/2021
Title:	Supervisor Turnboo, Supervisor Parlin, the Sheriff, and the Auditor-Controller recommending the Board of Supervisors authorize the Auditor to refund Public Safety Development Impact Fees totaling approximately $445,000 plus interest for fees collected from 2007 through 2016 and order the Auditor-Controller to refund these fees as soon as is practical. FUNDING: N/A		
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Attachments:	1. A - El Dorado Co Pub Safety Fee, 2. B - Resolution 049-2007, 3. C - Resolution 113-2007, 4. D - Email from Auditor-Controller, 5. E - BOS Mitigation Fee Act Previous Letters 11-14-15.pdf, 6. Public Comment BOS Rcvd. 9-27-2021		

Date	Ver.	Action By	Action	Result
9/28/2021	1	Board of Supervisors	Approved	Pass

Supervisor Turnboo, Supervisor Parlin, the Sheriff, and the Auditor-Controller recommending the Board of Supervisors authorize the Auditor to refund Public Safety Development Impact Fees totaling approximately $445,000 plus interest for fees collected from 2007 through 2016 and order the Auditor -Controller to refund these fees as soon as is practical.

FUNDING: N/A

DISCUSSION / BACKGROUND

On February 27, 2007, the Board of Supervisors adopted a public safety impact fee for the purpose of partially financing a public safety facility in the El Dorado Hills area. This fee was adopted pursuant to the California Mitigation Fee Act. Sometime between 2007 and 2015, the County dropped the near term goal to build a public safety facility (Sheriff's Substation) in El Dorado Hills. Accordingly, the Sheriff and the Auditor-Controller clearly communicated to the then County Counsel, the then CAO, and certain County Supervisors the need to stop collecting the fee and requested advice related to refunding the fee to the affected property owners. The attached email dated April 2, 2015, clearly documents a portion of this communication.

The Mitigation Fee Act requires that a reexamination of the need for each impact fee levied be made every five years and that certain specific findings be made related to the fees and unexpended fees every five years. The Mitigation Fee Act, Government Code Section 66001, subdivision (d)(2) states, "If the findings are not made as required by this subdivision, the local agency SHALL REFUND THE MONEYS in the account or fund." The Mitigation Fee Act does not require property owners to ask for refunds. A simple read of the Mitigation Fee Act indicates that the County has a statutorily duty to make refunds. The mandated findings were not made in 2012 as required and further have never been made.

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In 2015, the Austins, an El Dorado Hills couple, petitioned the Superior Court seeking a writ of Mandate to order the County to, among other things, comply with the statute, refund the public safety impact fee levied in the El Dorado Hills area. This litigation has progressed slowly and continues. The County filed a demurrer asserting that the lawsuit should be barred by the statute of limitations. That demurrer was overruled by the trial court. The County petitioned the Court of Appeal for an Extraordinary Write of Mandate seeking to reverse the trial court's decision. The Court of Appeal issued its decision on the Extraordinary Writ on October 30, 2019, and found for the County on some issues and found for the Austins on some issues. The County's actions continue to delay these statutorily required refunds of the public safety impact fees collected.

It is now 2021, and a number of property owners have been improperly charged fees as far back as 2007.

Further, in 2013, 2014, and 2015, the Auditor-Controller warned the Board of Supervisors of clear instances of noncompliance with the California Mitigation Fee Act. These warnings were ignored.

The reason that Supervisor Parlin, Sheriff D'Agostini, and Auditor Controller Harn recommend that the fees be refunded is self-evident. The property owners should be refunded their money.

On August 2, 2016, (Legistar 16-0769) the Board of Supervisors approved recommendation from the CAO to rescind the resolutions that established the Public Safety Impact fee which resulted in the County no longer collecting fees for this purpose. In addition, the Board directed the CAO to work with the Auditor-Controller to refund the entire balance totaling approximately $445,000 as soon as practical and to report to the Board within 30 days on the methodology status of the refund and again every 30 days thereafter.

Subsequently, on February 7, 2017, (Legistar 16-0769) the Board of Supervisors directed staff to discontinue with the monthly reports and delay distribution of the refunds.

Resolutions 049-2007 and 113-2007 were rescinded by Board action on August 2, 2016 (Item 3, Legistar 16-0769).

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