



## Legislation Text

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**File #:** 16-1082, **Version:** 3

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Chief Administrative Office recommending the Board approve **Final Passage** (Second Reading) of Ordinance **5057** repealing Chapter 13.30 regarding Community Services District and Parks and Recreation Impact Mitigation Fees and amending Chapter 13.20 of the County ordinance code regarding Development Fees for Fire Protection Service to set forth requirements for the establishment and administration of development impact mitigation fees collected by the County on behalf of Special Districts within the County. (Cont. 8/15/17, Item 22)

**FUNDING:** N/A

### **DEPARTMENT RECOMMENDATION**

At their August 15, 2017 meeting (Item 22) the Board approved Ordinance 5057 and set for Final Passage (Second Reading) on August 29, 2017. The Board provided direction to staff to

1) Approve the Introduction (First Reading) of Ordinance **5057** repealing Chapter 13.30 regarding Community Services District and Parks and Recreation Impact Mitigation Fees and amending Chapter 13.20 of the County ordinance code regarding Development Fees for Fire Protection Service to set forth requirements for the establishment and administration of development impact mitigation fees collected by the County on behalf of Special Districts within the County; and 2) Waive full reading, read by title only and continue this matter to August 29, 2017 for Final Passage (Second Reading).

### **DISCUSSION / BACKGROUND**

As part of the ongoing efforts to pursue efficiencies and modernize our operations, the Chief Administrative Office has been working on updating the County's ordinance code and Board of Supervisors Policy Manual. One of the guiding principles of this process has been to avoid duplication of existing state and federal laws and regulations at the County level.

On December 6, 2016, in accordance with Board policy A-3 - Ordinances - New or Amended, the Board conceptually approved the revision of Chapters 13.20 and 13.30 to remove provisions that are duplicative of or more restrictive than state law.

The establishment and administration of development impact mitigation fees are governed by the Mitigation Fee Act (Cal GOV 66000 et seq.) ("the Act"); however, the County has adopted Chapters 13.20 and 13.30 regarding development impact fees on behalf of special districts for fire protection services and parks and recreation, respectively. In addition to provisions that are duplicative of state law, the County's ordinance includes provisions that are much more restrictive than state law in regard to reports submitted to the county by these districts, increasing the administrative burden on the County and the Special Districts.

The ordinance, as amended, will require compliance with the Act, but will not require separate reporting to the County above and beyond what is required by the Act. The Mitigation Fee Act already

includes sufficient safeguards against the establishment of unreasonable fees and the misuse or unwarranted retention of fee revenues. Because a special district cannot impose a fee on its own, all development impact fees must be established by the Board of Supervisors. In order to establish a fee, the Mitigation Fee Act requires, among other things, that a reasonable relationship (nexus) exist between the fee and its proposed use and between the fee and the type of development upon which it is charged. At the time the Board is asked to establish a fee, it has an opportunity to thoroughly review the fee, the methodology that was used to calculate it, and assess the reasonableness of the relationship between the fee and its proposed uses and between the fee and the type of development upon which it is to be imposed. If the requesting district has failed to meet the requirements of the Act, the Board has the option to deny establishment of the fee and request that the district revise its request to comply with the Act.

The Act further requires that an accounting of fee revenue and expenditures be made public annually, and that the Board of Supervisors make specific findings regarding the unexpended portion of the fee every five years. These findings include: identification of the purpose for which the fee is charged, demonstration of a reasonable relationship between the fee and its stated purpose, and identification of the sources and amounts of revenues required to complete improvements and the dates on which those revenues will be realized.

The annual reporting required by the Act provides an opportunity for the Board and the public to request further information from a district regarding its use of the fee revenue. The five-year findings, which must be made by the Board of Supervisors, provide yet another opportunity for the Board to review the fee and determine whether it is reasonable to continue collecting the fee.

This recommendation is also made, in part, to place more of the responsibility for these fees with the independent, elected boards of the districts requesting the fees. While the Board of Supervisors is the body vested with the legal authority to establish the fee, policy and management decisions regarding the establishment of the fee and the use of fee revenues are matters of governance for the district boards. In recognition of this, the amended ordinance will require the County and the district requesting the fee to enter into an agreement that will clearly define the roles of the County and the district in the collection and administration of the fee, and require the district to adhere to the Mitigation Fee Act and indemnify the County and hold it harmless against any claims resulting from its activities related to the district's fees.

The current ordinance also requires a written agreement for the collection of parks and recreation impact fees, but does not require the same for the collection of fire impact fees. The proposed ordinance applies to any impact fee proposed by a Special District for establishment and collection by the County. It requires that the district and County enter into an agreement that will clearly define the rights and duties of each party, and provide for the Special District to defend, indemnify, and hold the County, its officers, agents, and employees harmless from and against any and all liability, loss, damage, claims, judgments, costs, staff time, losses, expenses, and any other costs of defense arising out of, resulting from, or related to the creation, establishment, modification, collection, or disbursement of fees on behalf of the Special District. Counsel has drafted a sample agreement, which is attached for review; however, the agreement may be modified slightly for each district as necessary. All agreements will return for the Board for approval.

The proposed ordinance, a version of the ordinance with changes tracked, a summary of the ordinance, and the sample collection and indemnity agreement are attached for review.

**ALTERNATIVES**

The Board could choose not to approve this recommendation, which would result in no change to the current ordinances.

**OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel

**CAO RECOMMENDATION**

It is recommended that the Board approve this item.

**FINANCIAL IMPACT**

N/A

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

N/A

**STRATEGIC PLAN COMPONENT**

Good Governance

**CONTACT**

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