



**DATE:** December 3, 2019  
**TO:** Mayor and City Council  
**FROM:** Director of Finance  
**SUBJECT:** Transmittal of the Annual Mitigation Fee Act Report (AB 1600)

### **RECOMMENDATION**

That Council adopts the annual Mitigation Fee Act (AB 1600) report prepared to satisfy Government Code Subsection 66006(b)(1).

### **SUMMARY**

The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray the cost of public facilities. AB 1600 was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989. This legislation requires an annual report on the status of all eligible fees pursuant to the Mitigation Act to satisfy Government Code Subsection 66006(b)(1) requirements. This staff reports includes four primary requirements that the City must satisfy in order to comply with the Mitigation Fee Act, and the City's response for each requirement for the prior fiscal year.

### **BACKGROUND**

It is common for local agencies to charge fees on new development to fund construction of capital facilities that will serve the development. The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray the cost of public facilities. AB 1600 was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989. This legislation also requires an annual report on the status of all eligible fees pursuant to the Mitigation Act.

### **DISCUSSION**

Below are the four primary requirements that the City must satisfy in order to comply with the Mitigation Fee Act, and the City's response for each requirement for the prior fiscal year.

1. **Requirement:** Make certain determinations regarding the purpose and use of a fee and establish a "nexus" or connection between a development project (or class of projects) and the public improvement being financed with the fee.

Response: For all projects requiring development fees subject to AB 1600, the City complies with this requirement by establishing a connection between the development and public improvements to be financed. This is accomplished through the established fee structure, which calculates the amount of public improvements required to be financed based on the type of development.

2. Requirement: Segregate fee revenue from the General Fund in order to avoid co-mingling of capital facilities fees and general funds.

Response: AB 1600 development fees are held in special deposit accounts outside of the General Fund and are therefore not co-mingled with other fees or funds.

3. Requirement: The City must make findings each fiscal year describing the continuing need for the money for all fees that have been in the possession of the City for five years or more, and for which the dollars have not been spent or committed to a project.

Response: Water and sewer connection fees are both nonrefundable. The fees collected are used to finance the acquisition, construction, and improvement of public water and sewer facilities needed as a result of this new development. The City's annual Capital Improvement Program (CIP) appropriates these funds to specific water and sewer improvement projects. A copy of the FY2020 CIP can be found here: <https://www.hayward-ca.gov/your-government/documents/capital-improvement-program>

4. Requirement: Refund any fees, including accumulated interest, for developer deposits in which the findings noted above cannot be made.

Response: No refunds are required at this time.

The City has satisfied the Mitigation Fee Act requirements for FY 2019.

### **ECONOMIC IMPACT**

Compliance with AB 1600 allows the City to hold development deposits for future improvements to the community to offset the impacts of these new developments.

### **FISCAL IMPACT**

There is no fiscal impact associated with this report. Attachment III provides a summary of the applicable fees pursuant to the Mitigation Act for FY 2019.

This report is prepared annually in compliance with Assembly Bill 1600.

### **PUBLIC CONTACT**

A public notice was published in The Daily Review on November 22, 2019, announcing the date, time, location, and subject matter of this report.

*Prepared by:* Marichu Maramba, Accounting Manager  
Carol Lee, Management Analyst

*Recommended by:* Dustin Claussen, Director of Finance

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

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Kelly McAdoo, City Manager