



City of Biggs

Agenda Item Staff Report For the Regular City Council Meeting: February 12, 2019

TO: Honorable Mayor and Members of the City Council
FROM: City Administrator
SUBJECT: Deferral of Development Impact Fees

Council is asked to consider the concept of a development impact fee deferral program, and approve a first reading of an authorizing ordinance.

Background

Development Impact Fees (DIF's) are collected so that improvement can be made to the City's transportation facilities, to increase the capacity of the waste water treatment plant, waste water collection system, drainage system, electric distribution system, parks, etc. DIF's are collected from the development of new residential and non-residential construction in the City. The goal is to create a situation whereby new construction pays for a significant portion of the city infrastructure needed to service and support that new development.

Typically, the City collects Development Impact Fees (DIF's) prior to the issuance of building permits. This is a typical default arrangement among cities and counties and is the recommended default methodology.

Upfront DIF's represent a significant cost to housing projects, and being an upfront cost present an early project cash flow challenge. It is not uncommon for jurisdictions to offer some sort of DIF deferral program. Deferral programs add complexity for City staff to administer the program including placing property liens, monitoring, collections efforts and ultimately the release of liens. The benefit to the city is be that a DIF deferral program incentivizes new development activity.

DIF Deferral Program Attributes:

1. Available as an option to the Developer.
2. Developer pays 10% of the DIF's at the time of applying for DIF deferral.
3. Developer pays \$150 fee to participate in the deferral program.
 - a. The intent is to cover the costs of time and effort to file property lien, monitoring, collections efforts and release of lien.
4. Developer pays the remaining 90% of the DIF's before a "Final" building permit approval is issued, or within 12-months, whichever occurs first.

It should be noted that the DIF deferral program would only apply to the specified City of Biggs imposed Development Impact Fees, not building permit fees or any other fees.

Recommendation: Approval of and first reading of **ORDINANCE NO. 417**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BIGGS, CALIFORNIA, ADDING CHAPTER 11.45,
PROVIDING FOR THE DEFERRAL OF DEVELOPMENT
IMPACT FEES, TO TITLE 11, BUILDINGS AND
CONSTRUCTION, OF THE BIGGS MUNICIPAL CODE**

Mark Sorensen, City Administrator

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CONSTRUCTION, OF THE BIGGS MUNICIPAL CODE**

WHEREAS, the city council of the City of Biggs desires to encourage the construction of residential and nonresidential development projects within the city; and,

WHEREAS, the city council finds that the existing requirements for payment of certain development impact fees for new development create a barrier to such development by requiring developers to retain a significant amount of cash or in-kind funds to pay certain development impact fees upon issuance of a building permit; and,

WHEREAS, the city council desires, by the adoption of this chapter, to ease this barrier by deferring the payment of certain development impact fees.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Biggs:

Section 1. Findings and Purpose. The City Council finds and declares that the above recitals are true and correct and hereby incorporate them herein by this reference.

Section 2. Authority. This ordinance is adopted pursuant to the authority granted by Government Code sections 66000 et seq.

Section 3. Chapter 11.45 is hereby added to Title 11, titled BUILDINGS AND CONSTRUCTION, of the Biggs Municipal Code to read as follows:

Chapter 11.45

DEFERRAL OF DEVELOPMENT IMPACT FEES

Sections

- 11.45.05 Title.
- 11.45.10 Purpose.
- 11.45.15 Deferred fees.
- 11.45.20 Definitions.
- 11.45.25 Fee Deferral Program.
- 11.45.30 Approval of deferred fees.
- 11.45.35 Program application.
- 11.45.40 Interest.
- 11.45.45 Fee adjustments.
- 11.45.50 Administration charge.

11.45.05 Title.

This chapter shall be known and cited as the “Deferral of Development Impact Fees.”

11.45.10 Purpose.

The city council of the City of Biggs desires to encourage the construction of residential and nonresidential development projects within the city. The city council finds that the existing requirements for payment of certain development impact fees for new development create a barrier to such development by requiring developers to retain a significant amount of cash or in-kind funds to pay certain development impact fees upon issuance of a building permit. Pursuant to the foregoing, the city council desires, by the adoption of this chapter, to ease this barrier by deferring the payment of certain development impact fees.

11.45.15 Deferred fees.

(1) The city may defer up to 90% of any or all of the following development impact fees pursuant to the provisions of this chapter:

- (a) Police services and facilities
- (b) Water facilities
- (c) Parks and recreation facilities
- (d) Wastewater facilities

- 1 (e) Electrical facilities
- 2 (f) General government facilities and services
- 3 (g) Fire protection services and facilities
- 4 (h) Storm drainage facilities
- 5 (i) Street facilities

6 (2) This section 11.45.15 provides the exclusive list of fees which may be deferred pursuant to
7 this chapter. Any fees not provided in this section shall be paid pursuant to applicable federal,
8 state or local regulations including, without limitation, fees related to the California
9 Environmental Quality Act.

10 **11.45.20 Definitions.**

- 11 (1) "Applicant" means the owner or owners of record for the real property on which an
12 approved development project is to be located.
- 13 (2) "Approved development project" means a development project that has received final
14 discretionary action by the city and which is in compliance with all federal, state and local
15 requirements including, without limitation, environmental requirements due prior to issuance of a
16 building permit.
- 17 (3) "Deferred fees" means any development impact fees, as set forth in section 11.45.15 that
18 the city has agreed to defer pursuant to a fee deferral agreement. "Deferred fees" shall include any
19 accrued interest, if applicable.
- 20 (4) "Fee Deferral Agreement" means a standardized agreement satisfactory to the city and
21 approved by the city attorney, executed by and between the applicant and the city for the purpose
22 of approving the deferral of certain deferred fees. The fee deferral agreement shall require the
23 applicant to indemnify, defend and hold harmless the city and its officials, officers, agents and
24 employees for any claims, causes of action or damages/cost arising from the city's temporary
25 deferral of the deferred fees. A fee deferral agreement is specific to an approved development
26 project and is nontransferable to another applicant or another approved development project.
- 27 (5) "Maximum deferral period" means the twelve-month period from the date of issuance of
28 the building permit in which any deferred fees may remain unpaid for any development. The
maximum deferral period for any building permit may be extended at the discretion of the city
council prior to the expiration of the nonresidential maximum deferral period.

1 **11.45.25 Fee Deferral Program.**

2 (1) Residential Development.

3 (a) An applicant must enter into a fee deferral agreement to qualify for a deferral of
4 development impact fees for residential development. The fee deferral agreement shall explicitly
5 provide for the recordation of a lien against the real property on which the approved development
6 project is to be located, which shall be removed upon payment in full of all deferred fees. All
7 costs assessed by the county for the recordation of the documents set forth herein shall be paid by
8 the applicant at the time of execution of the fee deferral agreement.

9 (b) Deferred fees for a single-family residential development shall be due and payable
10 in full for each individual lot within the approved development project upon the earlier of: (i) a
11 request for final inspection under a building permit; or (ii) the close of the maximum deferral
12 period for the applicable building permit.

13 (c) Deferred fees for a multifamily market-rate residential development shall be due
14 and payable in full for each building within the approved development project upon the earlier of:
15 (i) a request for final inspection under a building permit; or (ii) the close of the maximum deferral
16 period for the applicable building permit.

17 (d) If any deferred fees are not paid within the maximum deferral period, interest shall
18 accrue on any unpaid balance pursuant to section 11.45.40, final inspection and issuance of a
19 certificate of occupancy shall not occur, and payment of the deferred fees shall be undertaken
20 pursuant to the provisions set forth in the fee deferral agreement.

21 (2) Nonresidential Development.

22 (a) An applicant must enter into a fee deferral agreement to qualify for a deferral of
23 development impact fees for a nonresidential development. The fee deferral agreement shall
24 explicitly provide for the recordation of a security instrument, to be mutually agreed upon by the
25 applicant and the city, against the real property on which the approved development project is to
26 be located, which shall be removed upon payment in full of all deferred fees, including interest, as
27 specified in section 11.45.40. All costs assessed by the county for the recordation of the
28 documents set forth herein shall be paid by the applicant at the time of execution of the fee
deferral agreement.

(b) Deferred fees for nonresidential developments shall be due and payable in full upon
the earliest of: (i) the date set forth in the fee deferral agreement entered into for the subject
property; (ii) a request for final inspection under a building permit and/or a certificate of
occupancy; or (iii) the close of the maximum deferral period for the applicable building permit.

(c) If any deferred fees are not paid within the nonresidential maximum fee deferral
period, interest shall accrue on any unpaid balance pursuant to section 11.45.40, final inspection
and issuance of a certificate of occupancy shall not occur, and payment of the deferred fees shall
be undertaken pursuant to the provisions set forth in the fee deferral agreement.

1 **11.45.30 Approval of deferred fees.**

2 (1) No project shall be eligible for execution of a fee deferral agreement unless all of the
3 following conditions are met:

4 (a) The project shall be located on property within the City of Biggs.

5 (b) The project shall have received the final discretionary approval by the city council
6 and/or staff as deemed appropriate.

7 (c) The project shall have undergone all required environmental review and shall be in
8 compliance with all requirements established by the environmental document prepared for the
project.

9 (d) All conditions of approval, as applicable at the time of permit issuance, shall have
10 been met.

11 (e) All payments of taxes and assessments on the property on which the project is
12 located shall be current.

13 (f) The applicant shall have no unpaid balances due to the city for the project or any
14 other project or purpose.

15 (g) The applicant and/or his, her, or its partners and affiliates on the project shall have
16 been deemed by the city to present a low risk of non-payment of fees, if the city opts to conduct a
risk assessment, which may include meeting the following criteria and any others the city deems
necessary:

17 (1) The applicant and/or his, her, or its partners and affiliates on the project
18 have not had a foreclosure on any of its or their properties in the last four years.

19 (2) The applicant and/or his, her, or its partners and affiliates on the project,
20 and any companies in which any such person has held a controlling interest, have not filed for
bankruptcy within the past four years.

21 (3) The applicant and/or his, her, or its partners and affiliates on the project
22 have no outstanding civil judgments.

23 (h) All fees imposed by a government agency other than the city either shall have been
24 paid or shall have been the subject of a fee deferral agreement between the applicant and the
agency imposing the fees.

25 (2) The fee deferral agreement shall be approved and executed by the city administrator or
26 designee. All such approvals shall be based on the criteria in subsection (1) of this section, and
27 may be withheld if the approval criteria are not met, or if the approval criteria are met and if the
city administrator finds that it is not in the city's interest to approve a fee deferral agreement.
28

1 (3) Upon execution of a fee deferral agreement, the city shall record the fee deferral agreement
2 and any related security documents, if applicable, against the real property subject to the fee
3 deferral agreement in the amount of the deferred fees. Upon payment in full of the deferred fees,
the city shall remove the lien from the subject property.

4 **11.45.35 Program application.**

5 An application for deferral of development impact fees may be submitted concurrently with or in
6 advance of any application for building permits for the approved development project.
7 Notwithstanding any other provision of this code, in no event shall a building permit be issued
until either of the following occurs:

8 (1) Payment of all applicable fees due; or

9 (2) Execution of a fee deferral agreement and payment of all non-deferred applicable
10 development fees.

11 **11.45.40 Interest.**

12 For all residential and non-residential approved development projects for which a fee deferral
13 agreement has been approved and executed, no interest shall accrue during the maximum fee
14 deferral period. However, in the event deferred fees are not paid within the maximum fee deferral
15 period, a penalty equal to the annual rate of interest earned by the City of Biggs on the investment
16 of pooled funds, computed on the unpaid amount from the date of execution of the fee deferral
agreement to time of payment, shall be due and payable.

17 **11.45.45 Fee adjustments.**

18 Deferred fees shall be paid at the rate or rates applicable at the time of issuance of the building
19 permit.

20 **11.45.50 Administration charge.**

21 The city council may, by resolution, establish a processing and administration fee to cover the
22 reasonable costs of administering the fee deferral program established by this chapter. This
23 processing and administration fee shall be placed in the general fund and shall provide a revenue
source to cover the costs of preparing the fee deferral agreement and tracking the deferred fees.

24 **Section 4.** This ordinance is exempt from CEQA pursuant to section 15061(b)(3) which is
25 the general rule that CEQA applies only to projects which have the potential for causing a significant
26 effect on the environment and CEQA does not apply where it can be seen with certainty that there
27 is no possibility that the activity may have a significant effect on the environment. This ordinance
28 has no impact on the physical environment as it will not result in any changes.

1 **Section 5.** If any section, subsection, subdivision, sentence, clause, phrase or portion of this
2 Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of
3 competent jurisdiction, such decision shall not affect the validity of the remaining portions of this
4 Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each
5 section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact
6 that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions
7 thereof be declared invalid or unconstitutional.

8 **Section 6.** The city clerk shall attest to the passage and adoption of this Ordinance and shall
9 cause the same to be posted as required by law, and this Ordinance shall take effect thirty (30)
10 calendar days after its adoption.

11
12 **I HEREBY CERTIFY** that the above and foregoing Ordinance was duly and regularly
13 introduced and read at a regular meeting held on the 12th day of February, 2019 and DULY AND
14 REGULARLY ADOPTED the _____, 2019 by the following vote, to wit:

15 AYES: COUNCIL MEMBERS _____

16 NOES: COUNCIL MEMBERS _____

17 ABSTAIN: COUNCIL MEMBERS _____

18 ABSENT: COUNCIL MEMBERS _____

19
20 ATTEST:
21 _____

APPROVED:

22 Roben Benish
23 CITY CLERK

Nathan E. Wilkinson
MAYOR

Development Impact Fee Deferral Program

APPLICATION

Please submit a completed application to:
City of Biggs
465 C Street, PO Box 307, Biggs, CA 95917

Applicant Information

Name: _____

Mailing Address: _____

Contact Name: _____ Phone Number: _____

Website: _____ Email: _____

Who will be responsible for payment of Deferred Fees when due (if different from applicant)?

Name: _____

Mailing Address: _____

Contact Name: _____ Phone Number: _____

Website: _____ Email: _____

Anticipated Interest in Property at Due Date: _____

Please indicate the Organizational Legal Structure: _____

Project Information

Project Name: _____

Project Address: _____

Project Type:

Multi-Family Residential

Multi-Family Residential

Non-residential

Project Description: _____

Specific Plan Area: _____

Lot(s): _____

Assessor's Parcel Number(s): _____

Address: _____

Fees

Estimated total development impact fees for the project \$ _____

(Contact _____ for estimate)

Please check the development impact fees requested for deferral.

- Police services and facilities
- Water facilities
- Parks and recreation facilities
- Wastewater facilities
- Electrical facilities
- General government facilities and services
- Fire protection services and facilities
- Storm drainage facilities
- Street facilities

Total Amount Requested to be Deferred \$ _____ (Maximum: 90%)

Signature: _____

Name/Title: _____

Date: _____

Project Development Verification

- The project is located within the City of Biggs.
- The project has received final discretionary approval by the City Council, and/or staff as deemed appropriate.
- The project has undergone all required environmental review and shall be in compliance with all requirements established by the environmental document prepared for the project.
- All conditions of approval, as applicable at the time of permit issuance, have been met.
- All fees imposed by a government agency other than the City either shall have been paid or shall have been the subject of a fee deferral agreement between the applicant and the agency imposing the fees.

Verified by: _____ Date: _____

Finance Verification

- All payments of taxes and assessments on the property on which the project is located are current.
- The applicant has no unpaid balances due to the City for the project or any other project or purpose.
- The applicant and/or his, her, or its partners and affiliates on the project have been deemed by the City to present a low risk of non-payment of fees.

Verified by: _____ Date: _____

Application Approved by : _____ Date: _____
(Title)

Signature: _____