

NEVER BEEN CHALLENGED

City of San Diego Development Impact Fee Program

Redux

SUMMARY

Ever since the adoption of Proposition 13 in the late 1970s, cities and counties in California have been severely constrained in their ability to raise property taxes to support future growth.

However, in 1987, The Mitigation Fee Act (MFA) was enacted and codified as Government Code §§ 66000 et seq.¹ to provide a revenue source for public improvements, public services and community amenities necessitated by new development.

The MFA took effect in 1989, and applied to all local agencies in the state, including charter cities such as San Diego (City), giving them the ability to charge development impact fees (DIF) to ensure that new development pays its fair share of the construction and expansion of public improvements and facilities, such as roads, fire stations, libraries, and parks and recreation amenities. [See, MFA, Govt. Code §§ 66000 et seq.]

The authority to impose a DIF program, however, carried with it a number of express (and mandatory) obligations for establishing and imposing fees, and for justifying, collecting, maintaining, and accounting for expenditures of those fees to ensure they were applied to the projects and infrastructure for which they were collected. [See, MFA, Govt. Code §§ 66001, 66006 and 66023]

Because it can take several years to accumulate enough money to construct the improvements needed, the [public] agency must regularly report revenues, expenditures and projections of the time it will take to complete the construction. The MFA requires mandatory annual reporting of DIF funds, including the adoption of specific mandatory findings justifying the continued retention of any unexpended funds.

A failure to satisfy the mandatory requirements of this provision requires the refund of the unexpended portion of the funds (plus accrued interest) held more than five years, to the property

owners of record at the time of the refund. The failure to timely or adequately make these findings triggers the right of any person to request an audit of the fees. [See, Govt. Code § 66006(d)]

Finally, and pertinent to the findings and conclusions of this Report, if the agency has failed to comply with the reporting requirements for three consecutive years, an audit can be requested, and the agency must bear the full cost. [See, MFA, §§ 66006(d); 66023(h).]

Since its inception, the City's DIF Program has collected in excess of \$1 billion² to mitigate the impact of development projects throughout the City's fifty-two separate communities. This Report does not present a small or insignificant set of issues. Rather, it demonstrates a long pattern and history of what appears to be informed mismanagement of a large amount of money paid to the City over at least a decade.

Grand Jury 2022-2023 Redux³

The 2022-2023 Grand Jury (GJ) Report⁴ on the City's DIF program led to recommendations that the City self-evaluate whether the DIF Program was compliant with the MFA,⁵ that an independent financial and performance audit of DIF funds be performed by the City's internal auditor, and that the City Attorney evaluate whether the City's DIF program was in strict legal compliance with the MFA, particularly with the annual and five-year nexus reporting requirements.

Recommendations also included suggestions for the City to develop a standardized annual accounting and reporting format and a detailed five-year plan for the funds held on account.

The City's response to this report noted the City had "recently evaluated its reporting process and found areas where improvements can be made."⁶ However, none were specifically identified in the response.

Pivotal to the decision to reinvestigate the DIF program was a 2018 Performance Audit of Development Impact Fees⁷ by the Office of the City Auditor (Auditor) (Audit Report). The Audit Report concluded, "we found the internal controls over the assessment, collection, and tracking of impact fee funds are adequately designed and implemented."

However, under the surface lurked serious problems the Auditor chose to report in a confidential memorandum (Confidential Audit Memorandum), noting there were “two areas of the program [that] could potentially expose the City to risk.”⁸

The Confidential Audit Memorandum, addressed and ostensibly provided to City Management staff,⁹ advised of apparent deficiencies in the reporting and expenditure of DIF funds, including:

- Collecting funds the City may not be able to spend for its intended purpose due to land unavailability.¹⁰
- Three projects with impact fees that had been in the DIF budgets for five years or longer, without all funding having been identified during that time.
- Eleven projects were at risk of noncompliance because they might have been addressing existing facility deficiencies.

The Auditor concluded if the City does not report the findings, it may be subject to refunding unexpended funds in accordance with the MFA. The Auditor recommended the City Attorney review, based on the level of risk (or priority) assigned to each issue. The Confidential Audit Memorandum categorized this recommendation as Priority 1.¹¹

This conclusion is particularly pertinent in light of two judicial decisions, *Walker v. City of San Clemente* (2015)¹² (decided prior to the 2018 audit) (*Walker*), and *Hamilton & High v. City of Palo Alto* (2023)¹³ (*Hamilton*). These cases (discussed in this Report) clearly highlight the importance of strict compliance with mandatory provisions of the MFA and demonstrate the potential financial impact to the City for its specific non-compliance. In both cases, compliance with the MFA was required and refunds were ordered by the courts.

The Confidential Audit Memorandum uncovered what appears to be informed mismanagement of a large amount of money paid to the City. The GJ examined how seriously City Management responded to the Confidential Audit Memorandum findings.

The GJ found no evidence the Confidential Audit Memorandum had been received and reviewed, much less acted upon. The GJ interviewed City Management staff from the 2018-2019 timeframe, and all interviewees either did not recall the Confidential Audit Memorandum, could

not remember what actions were recommended or taken by Management, or claimed they were not involved in any actions taken.

The GJ can only conclude City Management decided — since the Confidential Audit Memorandum findings would not have been publicly divulged — they presented little risk of discovery, or it was enough to deflect the findings to the City Attorney’s office.

The GJ also found a number of City employees, who are involved in direct administration of the DIF Program, possess little knowledge or awareness of MFA requirements or the severity of the consequences for non-compliance.

The GJ discovered red flags signaling trouble ahead as far back as 2011, and since that time City Management has acted deliberately, with constructive and actual knowledge of the potential legal compliance deficiencies in administration of the City’s DIF Program.

Our investigation concluded that despite clear warning signs, the City has failed to take appropriate actions to correct problems or corrective action in administering the DIF program.

As this Report demonstrates, the City failed to comply with multiple, mandatory MFA provisions, improperly moving \$720,260 from community DIF accounts, and possibly requiring a refund of at least (and potentially significantly more than) \$178.8 million in DIF funds to property owners for DIF projects that have languished for over five years without any City action.

During this investigation the GJ questioned whether the City had taken action to correct the deficiencies or refund fees held in violation of the MFA? The overwhelming answer was that the City has **NEVER BEEN CHALLENGED**.

BACKGROUND

The 2024-2025 GJ decision to further investigate the City’s administration of DIF funds was prompted by a report by the 2022-2023 GJ and by discovery of a number of what were considered “red flag” issues the City should have paid attention to and taken action to correct. The following presents, in chronological order, the issues brought to City Management’s attention over the course of the eleven-year period prior to the 2022-2023 GJ investigation.

Prelude – 2011 & 2013 City Attorney Reports

In 2011, at the request of the Committee on Land Use and Housing, then City Attorney Jan Goldsmith was asked to provide a legal review of the City's updates to the DIF ordinances, including the legal implications of the City's failure to annually update Financing Plans for DIFs.¹⁴ The City Attorney's short answer to this question was: "State law requires annual updates to the Financing Plans for DIFs," citing the Mitigation Fee Act (MFA) § 66002(b).

He advised that "Financing Plans in FBA¹⁵ communities should be updated to ensure fairness and equity; to ensure sufficient funds are collected to fund all the necessary public facilities in the communities; and to limit the potential future costs to the City's other revenue sources if [DIF]s collected are insufficient to provide the necessary public facilities."

Further, he states, "The Financing Plans in DIF communities should be updated annually to comply with the MFA's requirement that capital improvement programs be 'annually updated,' and to ensure future DIFs are not based upon 'costs attributable to existing deficiencies in public facilities.'"¹⁶

The 2011 City Attorney report cited MFA §§ 66001(g) and 66002(b),¹⁷ San Diego Municipal Code (SDMC) § 61.2212,¹⁸ and Council Policy 600-36,¹⁹ regarding the requirement for annual review and adjustments to Financing Plans for DIFs.²⁰

The somewhat unusual fallout from this opinion was that one year later, Council Resolution R-307565²¹ repealed Council Policy 600-36, thus setting the stage for the City to cease the costly process of annual updates to the community-based DIF financing plans.²²

Despite the repeal of the Council Policy 600-36, in a 2013 Report to the Mayor and City Council titled, "Public Facilities Financing Plan Update Considerations,"²³ City Attorney Goldsmith, once again, advised the City to "update its Public Facilities Financing Plans annually to comply with statutory requirements, reflect increases or decreases in the actual costs of public facilities projects, changes to the scope and type of projects needed in the community, and changes to various Financing Plan assumptions to reflect current reality, thus ensuring the continual

accuracy of the Financing Plans and reasonableness of the associated development fees,” citing the 2011 report discussed above.

As with the Council Policy, San Diego Municipal Code § 61.2212²⁴ was repealed on April 6, 2016.²⁵ The annual report update requirement, however, remains in the MFA.²⁶ [See, MFA § 66006(b)(1)]

The 2011 and 2013 City Attorney reports demonstrate the City Council was advised of the potential issues of inaccurate and untimely DIF nexus findings, risks of possibly overcharging DIF fees, and other non-compliance with the MFA, yet the City apparently ignored legal recommendations. Instead, the City Council repealed the applicable Municipal Code and Council Policy directives that, if followed, might have mitigated some of the risk of a challenge to the City. Because the City’s management of the DIF funds had not been challenged, and the millions of dollars it generated were providing a comfortable cushion for favorite projects, change apparently was not the preferred course.

The Road to DIF Mismanagement

In addition to the 2011 and 2013 City Attorney reports, the following provides a short chronology of additional red flags that, had they been taken seriously, should have encouraged the City to step back and take decisive action to revamp the DIF program and the manner in which it was being administered:

- A 2014 Independent Budget Analyst Report which questioned the City’s standard for establishing parkland requirements²⁷ that was likely not realistically achievable.²⁸ The consequences being the inability to provide parklands to communities needing them.
- The 2015 *Walker v. City of San Clemente* decision, in which the City of San Clemente was ordered to refund \$10.5M in DIF funds collected because the five-year findings failed to satisfy MFA’s requirements and did not justify the city’s continued retention of the unexpended funds. This is considered a landmark case demonstrating the harsh mandatory consequences for non-compliance with the MFA.²⁹

- The 2018 Performance Audit conducted by the former City Auditor, including the Confidential Audit Memorandum (discussed briefly above) which advised the City of deficiencies in reporting and expenditure of community DIF funds, which “could potentially expose the City to risk.”
- A 2019 report prepared for the City by Keyser Marston Associates (KMA), titled “Technical Analysis – Evaluation of DIF Methodologies.”³⁰ In that report, KMA recommended, among other things, that the City establish administrative fees and annual inflators, with administrative fees ranging between 5% and 8% of project costs.
- The 2022-2023 GJ Report which posed serious questions regarding the City’s compliance with the MFA.³¹
- The 2023 *Hamilton and High v. City of Palo Alto*³² case in which the court ruled since more than 180 days elapsed between the City of Palo Alto’s fiscal year ending June 30, 2018, and the city's late filing of five-year findings, the City must refund unexpended DIF funds which could total \$1 million.³³

These reports and judicial decisions collectively should have alerted the City, its elected officials, management staff, and certainly legal counsel to potential issues of risk associated with City noncompliance with MFA mandates regarding the management, justification, expenditure and reporting of DIF funds.

DIF Funds Accounting

The City of San Diego is divided into fifty-two separate communities, each associated with a specific community plan³⁴ and associated financing plan.³⁵ These plans were intended to serve as the vision for each of the City communities’ planned growth.

The financing plans originally served as the nexus studies, required by the MFA, to identify and establish the cost of the facilities and services identified in the community plan and in conjunction with the City’s DIF program identify costs associated with mitigating the impact of development in each community.³⁶ These financing plans are used to develop specific impact fee dollar values that will be charged in each community to cover the estimated cost of providing

new public facilities, including parks, libraries, fire and rescue facilities, and streets which are necessitated by new development.

The detailed financial statements for each of these DIF accounts are compiled in each fiscal year's DIF Funds Report³⁷ required by the MFA to be published (not more than) 180 days after the end of each Fiscal Year (i.e., December 28 each year).³⁸ DIF funds collected are segregated into a separate account for each of the fifty-two communities. Further, each community DIF account has sub-accounts that dedicate funds for those projects or purposes noted above (i.e., parks, library, fire, streets, etc.). These accounts are collectively referred to as the "legacy" or "lockbox" DIF accounts because they were created under the City's previous community-based DIF program.

Notwithstanding the fact the new Build Better SD³⁹ Citywide DIFs are touted as being used anywhere in the City, regardless of where they are collected, the legacy/lockbox DIF accounts must be spent in the community in which they were collected and for the purpose for which they were collected. These detailed, segregated accounts form the framework for the annual reports, including the five-year funds reporting required by the MFA.

Figure 1 reflects the history of DIF fund balances from FY 2015 to FY 2024, and reveals a steady increase, year-over-year, of the total DIF fund balances and total funds held longer than five years. While the FY 2024 Annual Report has not been published (as of this report writing), Figure 1 reveals that approximately 40% of the community-based funds held longer than five years remained static at approximately \$178.8 million from FY 2023 through FY 2024.

Figure 1 further shows DIF funds expended in FY 2024 totaled \$94.6 million, a significant 42% increase from FY 2023 and prior years.

	See Note	Beginning Balance	DIF Funds Collected	DIF Funds Expended	Ending Balance	Unexpended Balance >5 years
FY 2015	1	\$287,219,144	\$83,267,608	\$33,613,014	\$338,735,156	\$57,402,891
FY 2016		\$338,735,156	n/a	n/a	\$395,295,896	n/a
FY 2017		\$395,295,896	\$88,731,295	\$70,955,782	\$414,487,740	\$88,829,559
FY 2018		\$414,487,740	\$71,995,185	\$52,941,583	\$437,157,084	\$98,037,110
FY 2019		\$437,157,084	\$72,707,086	\$60,924,340	\$463,989,237.0	\$106,790,662
FY 2020		\$463,813,767	\$49,513,342	\$61,714,798	\$466,842,931	\$106,848,173
FY 2021		\$466,842,931	\$72,204,748	\$57,039,295	\$483,871,858	\$127,817,447
FY 2022		\$490,871,858	\$79,066,827	\$50,884,337	\$511,454,359	\$243,373,203
FY 2023	2	\$511,592,811	\$65,128,805	\$66,559,598	\$517,600,852	\$178,754,351
FY 2024		\$510,693,487	\$69,268,539	\$94,580,563	\$508,397,261	\$178,754,366

¹ DIF Funds Report Not Available Online - The FY 2016 beginning & ending balances are inferred from FY2015/FY2017 reports.

² The FY 2024 beginning balance reflects an adjustment from the FY 2023 ending balance, for an inter-fund loan repayment.

Figure 1 Development Impact Fee Fund Balances FY 2015 – FY2024

Figure 2 compares FY 2023 and FY 2024 DIF fund balances (all accounts),⁴⁰ and funds held in community-based accounts longer than five-years. Since the Build Better SD DIF Program structure with only four citywide fund accounts took effect in the FY 2020 to FY 2022 timeframe, the chart also compares legacy fund balances with citywide fund balances.

The citywide Park DIF fund first appeared in the FY 2022 funds reports, followed by the Fire, Library, and Mobility citywide DIF fund accounts beginning in FY 2023. Prior to FY 2023 all funds would have been, by definition, community based. Community based DIF funds continue to be collected on projects approved prior to the establishment of the citywide DIF.

The chart shows the citywide fund balances growing year-over-year (\$52.2 million to \$82.5 million) with a corresponding decrease (\$465.4 million to \$425.9 million) in community-based funds. That is to be expected as funds collected will incrementally transition from being community-based fees to citywide fees.

For FY 2024 DIF Funds⁴¹ we find that the total funds held in all DIF accounts (including citywide funds accounts) is \$508,397,132, of which \$425,877,132, or 84%, resides specifically in the legacy/lockbox community-based DIF accounts. Key is that for FY 2023/2024 the funds held longer than five years, all reside in the community-based DIF accounts. With the creation of

Build Better SD, starting with the FY 2023 DIF Report, there will be no citywide funds held longer than five years until FY 2028. The challenge for the City moving forward will be to find a way to spend-down the \$425.9 million in the community-based lockbox funds and specifically the (minimum) \$178.8 million of those funds held longer than five years.

	FY 2024	FY 2023
Total Funds Balance	\$508,397,261	\$517,600,852
Total City-wide Funds Balance	\$82,520,129	\$52,221,634
Community DIF Fund Balances	\$425,877,132	\$465,379,218
Percentage of Total Funds Balance	83.77%	89.91%
Funds Held Longer Than Five-Years	\$178,754,366	\$178,754,351
Percentage of Community Funds Balance	41.97%	38.41%

Figure 2 Legacy DIF Funds v. City-Wide Funds Balances FY 2023 v FY 2024

Annual Reporting Substantive Issues

Using the FY 2023 DIF Annual Report⁴² as an example, the City has typically only reported fund details for accounts with balances greater than \$500K. This accounts for only 71% (37) of the fifty-two community accounts with balances on deposit. Clearly, this does not comply with the requirement of MFA § 66006(b)(1) to report “each separate account or fund.”

Additionally, the FY 2023 Report only accounts for funds collected and fund expenditures in excess of \$500K, or 27% (fourteen) of the fifty-two community accounts.

To glean full account details for the absent fifteen community DIF accounts, one must consult the DIF Funds Report⁴³ which details fund balances for each separate account or fund. However, this separate report provides no further detail⁴⁴ for funds held for more than five years in each sub-account or how and when they will be spent.

The Annual Report also only provides “examples” of infrastructure projects that are “fully or partially funded by DIF.” This does not satisfy §§ 66006(b)(1)(E)⁴⁵ and 66006(b)(1)(F)(i),⁴⁶ which require detailed information on each public improvement on which fees were expended,

together with funding and construction status of each improvement delayed or pending construction.

Although some of the information required may be obtained in other various locations on the City's website, the FY 2023 Annual Report provides none of the details required by MFA § 66006(b). One would need to know exactly how, and where, to look on the City's site. The GJ believes that an interested citizen should not be required to do an extensive search for data. The City should comply with the MFA reporting requirements by combining all data in one report.

METHODOLOGY

In investigating and preparing this Report the 2024-2025 Grand Jury interviewed:

- Past and present City department heads (Management) and staff.
- Community Planning Committee chairpersons and members

The Grand Jury requested an external independent audit be performed of the City's DIF Program:

- Audit conducted by an external auditor with significant government experience.
- Audit focus was to determine compliance with mandatory MFA reporting requirements, and review and validation of the Confidential Audit Memorandum findings
- The Audit Report was confidential to the 2024-2025 Grand Jury

The Grand Jury researched pertinent judicial authority regarding challenges to the MFA, which cases are referenced throughout this Report as they pertain to the findings.

The following authorities and documents were reviewed in connection with the investigation:

- California Government Code, Title 7 (Planning and Land Use), Division 1, (Planning and Zoning), Chapter 5, (Fees for Development Projects), MFA §§ 66000 – 66025
- City of San Diego Development Impact Fees Report What's The DIF? San Diego County Grand Jury 2022-2023 (May 2023)
- City of San Diego Response to San Diego County Grand Jury Report Titled "City of San Diego Development Impact Fees - What's the DIF?" (November 14, 2023)
- Performance Audit of Development Impact Fees, Office of the City Auditor, OCA 18-022 (June 2018)
- Confidential Issues Related to (1) Impact Fee Assessments for Park Acquisition, and (2) Justification for Certain Types of Impact Fee Expenditures (June 5, 2018), San Diego City Auditor (Confidential Audit Memorandum submitted to City Planning Department Management)

- Performance Audit of the City’s Capital Improvement Project Approval Process, Office of the City Auditor, OCA 23-09 (June 2023)
- Mitigation Fee Act: Fees for Improvements: Reports and Audits. AB 516
- Charter of the City of San Diego, § 39.2 (Office of City Auditor)
- San Diego City Council Policy No. 000-31 (Capital Improvement Program Transparency) (September 22, 2022)
- San Diego City Council Policy No. 800-14 (Prioritizing Capital Improvement Program Projects)
- City of San Diego Community Plans and PFFP/IFS (total 52)
- City of San Diego Build Better SD Plan
- Technical Analysis Evaluation of Development Impact Fee (DIF) Methodologies, Prepared for: City of San Diego by Keyser Marston Associates (2019)
- Impact Fee Handbook, National Association of Home Builders, 2008, updated 2016
- City of San Diego Development Impact Fees Funds Reports & Annual Reports for FY 2022 through 2024.
- Proposed Updates to Facilities Benefit Assessment and Development Impact Fee Ordinances, City Attorney Jan Goldsmith (2011)
- Public Facilities Financing Plan Update Considerations, City Attorney Jan Goldsmith (2013)
- Reports by the Office of the Independent Budget Analyst (IBA)
- Proposed Ballot Measure Amending the City Charter to Provide the Office of the City Auditor and the Audit Committee With Access to Independent Legal Counsel, Report to the Honorable Members of Rules Committee, City of San Diego, Office of the City Attorney, Mara W. Elliot (February 15, 2022)
- Lower Impact Fees -- Or Just More Nexus Studies? California Planning and Development Report, William Fulton (April 14, 2024) (Fulton was a former City Planning Director)

DISCUSSION

In support of its investigation, the 2024-2025 GJ retained the services of an external government auditor to conduct an independent performance audit (“Independent Audit”) of the City’s DIF program specifically to confirm the issues raised in and findings of the 2018 Confidential Audit Memorandum and additionally provide the GJ an unbiased professional evaluation of the City’s compliance with other MFA reporting requirements.

The Independent Audit confirmed inconsistencies in the City’s compliance with each of the MFA’s annual and five-year reporting requirements, including the issues outlined in **Figure 3**.

Mitigation Fee Act Requirement	Noncompliance Identified
§ 66006(b)(1) - “...the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the following information for the fiscal year.”	DIF Annual Reports were not made available to the public within 180 days for the last four fiscal years. FY 2024 – Not available to date FY 2023 – Available November 2024 FY 2022 – Available November 2023 FY 2021 – Available June 2022
§ 66006(b)(1)(E) - "An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fee."	The expenditures made for each improvement, including the costs funded with DIF funds, is provided on the City’s Capital Improvement Program (CIP) Budget, but the percentage breakdown of costs funded with DIF was not documented in the annual report or CIP
§ 66001(d)(1)(D) - "Designate the approximate dates on which the funding referred to in subparagraph {c} is expected to be deposited into the appropriate account or fund."	The approximate dates on which the funding is expected to be deposited into the appropriate account or fund was not documented in the annual reports.

Figure 3 MFA Reporting Requirements & Noncompliance Identified

Additionally, the Independent Audit revealed other major findings including:

- In the annual DIF funds reports from Fiscal Year FY 2021 – FY 2023, an administrative fee titled ‘DIF Rebuild’ was used to fund reformation of the DIF program from community-based DIF accounts to Citywide DIF accounts with the adoption of Build Better San Diego (Build Better SD). This is in violation of MFA § 66006(a), which requires that “funds shall be expended only for the purpose for which the fee was originally collected.”

Twenty-two community-based DIF accounts incurred ‘DIF Rebuild’ charges, totaling \$720,160, recorded in the DIF fund reports, in violation of the following MFA requirements:

- § 66001(a): DIF funds must be used directly on projects within the communities where they were collected, including administrative costs related to those projects and community accounts; and
- § 66001(b): The adoption and collection of DIF fees must include a breakdown demonstrating the relationship between the fee amount and its intended use.
- Administration fees exceed documented acceptable percentages. Excess amounts of administrative fees have been charged against accounts – in some cases, as much as 18%.
 - The City acknowledged that it failed to monitor the total administrative fees due to the lack of an accounting mechanism for the City to track administrative fee charging to avoid exceeding acceptable cumulative limits.
- Although the City deposits DIF funds received into each community-based DIF sub-accounts, i.e., Parks, Fire, Libraries, etc.), the City in practice does not differentiate between these fee categories. Thus, there is no guarantee the collected DIF funds are spent for their intended use, as is required by the MFA.

It is unknown whether the City Attorney performed the requested review and advised Management on corrective action in the 2018-2019 timeframe because attorney advice is typically privileged, and the Grand Jury was unable to speak to a City Attorney to confirm this matter. However, the present investigation may not have confirmed and uncovered the serious findings in this Report had the City received or followed proper corrective advice.

The MFA provides clear unequivocal language in describing the duties and responsibilities of a local agency that implements a DIF program. The MFA uses the operative word “shall”⁴⁷ ninety-eight times to describe the onus placed on the local agency regarding management, reporting, spending and refunding of DIF funds collected. And the courts have confirmed that “shall” used in the MFA means “must,” or suffer the consequences.

The MFA’s Mandatory Annual Reporting Requirements

The Mitigation Fee Act’s annual reporting obligation is implemented primarily through public disclosure requirements, where local agencies must publish detailed reports on the status of DIF

including their establishment/increases/decreases, collection, usage, and reporting of unexpended balances, making this information accessible to the public and subject to public scrutiny in a timely manner. The MFA, unfortunately, does not require annual reports to be submitted to any entity outside the agency itself, e.g., the State of California. In effect, maintaining compliance with the MFA reporting is an honor system which relies on the public's knowledge and ability to track the integrity of the City's fiscal management.

Specific Accounting & Reporting Requirements

Section 66006(a) specifies the procedures a local agency must follow in accounting for DIF revenues. The agency "shall deposit it with the other fees for the improvement in a separate account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency." Further, § 66006(a) specifies funds in these accounts may be expended "solely for the purpose for which the fee was collected." And § 66008 clarifies, "The fee shall not be levied, collected, or imposed for general revenue purposes."

Section 66006(b)(1) specifies "the local agency shall, within 180 days after the last day of each fiscal year, make available to the public the information [detailed in the code] for the fiscal year.

Section 66006(b)(2) specifies "the local agency shall review the information made available to the public at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public." This requirement requires the review be performed by January 12th every year.

Section 66001(d)(1) specifies further: "For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the findings with respect to that portion of the **account or fund remaining unexpended**, whether committed or uncommitted." (Emphasis added.)

In practical terms this means that if revenues remain in the account after the fifth anniversary of **the first deposit into the account**, and every five-years thereafter, the local agency must repeat the findings of reasonableness required by § 66001(a) and identify the sources of funds needed to complete the financing of the public improvement and the date on which the funding is expected.

This is a key non-conformance in the City’s annual reporting. For the City, the “findings or reasonableness” take the form of the community financing plans which are many years out of date. This further highlights the need for annual updates to the community financing plans.

Sections 66001(d) and 66006(b)(1) detail the specific findings the local agency is required to make, beginning the fifth fiscal year following deposit of development fees into a DIF fund or account, regarding the amount of the fund that remains unexpended.

Section 66001(d):

- Identify the purpose to which the fee is to be put,
- 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 of incomplete improvements, and
- Designate the approximate dates by which this funding is expected to be deposited into the appropriate account or fund.

Section 66006(b)(1):

- A brief description of the type of fee in the account or fund,
- The beginning and ending balance of the account or fund,
- The amount of the fees collected, and the interest earned,
- Identification of each improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees,
- Identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing and the public improvement remains incomplete,
- Identification of each public improvement identified in a previous report pursuant to and whether construction began on the approximate date noted in the previous report,

- For a project for which construction did not commence by the approximate date provided in the previous report, the reason for the delay and a revised approximate date that the local agency will commence construction,
- A description of each interfund transfer or loan made from the account or fund, and
- The amount of refunds made pursuant to § 66001(e), the number of persons or entities identified to receive those refunds, and any allocations pursuant to § 66001(f).⁴⁸

Regarding the annual reporting pursuant to § 66006(b)(1), the GJ found the City has been out of compliance for at least the last four consecutive fiscal years. The City has not published its DIF Annual Report within 180 days of fiscal year end⁴⁹ since FY 2021.⁵⁰ **Figure 4** shows the publication dates for the last four annual reports.

City of San Diego Fiscal Year ¹	Annual Report & Funds Report Due Date ²	DIF Funds Report Issued ³	Annual Report Published
FY 2024	December 28, 2024	March 5, 2025	N/A
FY 2023	December 28, 2023	March 14, 2024	November, 2024
FY 2022	December 28, 2022	March 9, 2023	November, 2023
FY 2021	December 28, 2021	December 27, 2021	June, 2022

¹ July 1st - June 30th

² Due 180 days after end of each Fiscal Year per § 66001(e) & § 66006(a)

³ Funds report closing statement is due in concert with the Annual Report.

Figure 4 City of San Diego Annual Reporting Compliance FY 2021 – FY 2024

In addition to the delinquency of the published annual reports, the Funds Report (the detail DIF Fund accounting record) is typically published 3-6 months late. Example, the FY 2024 Funds Report was recently published in early-March 2024. Since the Annual Report relies on, and must include, the Funds Report, it is also subject to the MFA requirement to be released on December 28, 2024 – 180 days after fiscal year end.

If the DIF Annual Report for FY 2024 follows the same trajectory as the FY 2023 Annual Report,⁵¹ it will not be published until March of 2026 – a full 15 months late. In fact, the last

fiscal year in which the City published its DIF Annual Report before the 180-day deadline was FY 2015.⁵²

Consequences of Annual Reporting Noncompliance

The legal and financial ramifications for the City of noncompliance with the MFA are foretold in a recent judicial decision, *Hamilton & High v. City of Palo Alto*,⁵³ where the court ruled since more than 180 days had elapsed between the City of Palo Alto's fiscal year ending June 30, 2018, and the late filing (May 2020) of five-year findings the city had failed to conform to mandatory procedures required by the MFA, making the unexpended amount of the fund subject to refund to the then-current property owners, under § 66001(d)(2).

The *Hamilton* court also referenced the *Walker v. San Clemente*⁵⁴ court interpretation that the express statutory purpose of the five-year reporting is to require a local agency to reexamine the necessity for the unexpended balance of the fee every five years, and refund to then-current owner or owners of the development project any unexpended portion of the fee for which need could not be demonstrated. The courts in *Hamilton* and *Walker* held that refund is the statutorily mandated remedy for noncompliance with § 66001(d) reporting requirements of the MFA.

There Are No Do-Overs

In *Walker*, the court rejected San Clemente's argument the trial court should have remanded the matter back for the city to correct technical reporting deficiencies rather than requiring the forfeiture of DIF collected. The court concluded that a refund was the mandatory statutory remedy.

The City has been non-compliant with annual reporting requirements for a long time and a restatement of each of these Fiscal Year Reports will not remedy that non-compliance.

Implied Fiduciary Responsibility

The GJ relies on the premise there is an implied fiduciary responsibility for the City to expend the DIF funds collected to alleviate the impacts of development in a timely manner, presumably to ensure that public improvements are constructed to accommodate the growth. We believe

timely spending of DIF funds collected is what the citizens of San Diego, and particularly the communities affected by the new development, expect and deserve.

The 2024-2025 GJ echoes the 2022-2023 GJ in recommending the City refund the approximately \$178.8 million in funds (or other amount determined by an audit to be appropriate) held longer than five-years. Given there are no do-overs under the clear language of the MFA, as confirmed by the courts, the City can no longer justify retaining these funds where the City has persistently failed to comply with clear mandatory reporting requirements of § 66006(d).

City Council & City Attorney Due Diligence (Who's Minding the Store?)

A City Council resolution is a formal expression of opinion or intention involving a factual determination of conditions that a statute or ordinance has been met. For San Diego a resolution is “a formal expression of opinion or intention of the City Council.”⁵⁵ Resolutions go into effect on the date of final passage. Resolutions often involve budget matters pertaining to the City's finances and allocation of funds for various purposes. This includes the DIF Annual Reports which the City Council reviews and approves each fiscal year.

Like ordinances, resolutions are drafted and submitted to the City Council with the City Attorney's oversight. In the case of DIF Annual Reports, this implies that the City Attorney's office has vetted information contained in the DIF Annual Report to determine accuracy and compliance with all statutory requirements, including substantive MFA data accounting and reporting deadlines, and consistent with past controlling judicial decisions on the subject, including relevant judicial authority.

Currently, the typical timeline for the review of each year's Annual Report by the City Council is detailed in **Figure 5**. The review and approval of the FY 2023 DIF Annual Report, (via Resolution R-316039)⁵⁶ by City Council occurred nearly four months after the Report was made available to the public on the City's website. This is in addition to the fact that the Annual Report was already eleven months delinquent.

Fiscal Year Annual Report Due Date per § 66006(b)(1)	Annual Report (available on City Website)	Active Transportation & Infrastructure Committee Annual Report Review	City Council Annual Report Review & Acceptance	Council Resolution to Accept Annual Report
December 28, 2023	November, 2024	January 30, 2025	March 5, 2025	R-316039

Figure 5 Typical DIF Report Resolution Review by City Council

The City Attorney has responsibility to protect the City from liability. Given the red flags beginning in 2011, clear compliance failures and substantive issues related to the City’s mismanagement of the DIF Program, together with a growing body of judicial authority pointing the way to a legal challenge to the City’s management of the DIF Program, one must ask what the City Attorney has effectively done to right the ship.

Many of the issues detailed in this Report could be attributable to a lack of training and/or detailed knowledge of the MFA and its requirements by City Management and staff. The implication, however, is that the lack of understanding extends further to include the City Attorney and City Council, who have also been given notice many times of issues raised regarding MFA compliance and the ramifications thereof.

As the 2022-2023 GJ recommended, the City Attorney needs to take a more proactive role in vetting how the City administers the DIF Program and provide clear legal guidance to ensure City Management and Council are aware of the dire pitfalls of noncompliance.⁵⁷ In the interest of public transparency, this might start with publishing legal opinions pertaining to the City’s DIF and MFA compliance on the City’s website.

Since the legal stakes are high for the City, there is no better time for the City Attorney to examine who is really minding the store.

Refund Sanction for Failure to Make Adequate or Timely Five-Year Findings

Key to the MFA are the refund provisions of MFA §§ 66000 et seq,⁵⁸ which provide the exclusive and mandatory enforcement mechanism written into the Act.

The refund provisions of the MFA are the most powerful enforcement tool written in the Act. Intuitively, if the improvements for which fees have been collected to mitigate have not been or likely never will be constructed, why should the local agency be able to use the money for other purposes or continue to hold the funds ad infinitum?

Refunds to the property owners of record (at the time of the refund) are the mechanism for returning the unspent funds to the source that suffered the consequences of development and/or did not benefit from the improvements that were required to maintain the level of service enjoyed prior to the new development.

The *Walker* court confirmed that “[i]f a local agency is holding unexpended funds and cannot or has not made the required findings within 180 days as required by § 66001(d) and § 66006(b)(1), the agency must refund, on a prorated basis, the unexpended portion of the funds and any interest accrued thereon to the current owner of the property originally subject to the fee.”⁵⁹ The language of the *Walker* court is patently clear: “A statute’s clear and unambiguous language controls, and therefore we need not resort to extrinsic sources or rules of statutory interpretation to determine the statute’s meaning;”⁶⁰ “we affirm because the City [of San Clemente] failed to make the five-year findings the Act required and the statutorily mandated remedy for that failure is the refund of all unexpended...impact fees.”⁶¹

The *Hamilton* court reiterated, “Having considered the statutory language and relevant legal authorities, we agree with *Walker* that a refund is the statutorily mandated remedy for failing to make required five-year findings under § 66001(d).”⁶² It must be noted the California Supreme Court declined review in both cases, thus solidifying the rulings as case law.

The unsaid reasoning behind the refund provisions is to encourage agencies to spend the DIF funds for the purpose of which they were collected. Ultimately providing the public the needed facilities must be the number one goal of an agency, as opposed to refunding unspent fees to the property owners who suffered the loss of amenities they deserved. The process of administering refunds is painful from a financial perspective and from a credibility perspective.

As MFA § 66006(f) so clearly states, “The Legislature finds and declares that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern.”

Funds which sit on account for five, ten, or longer years do not meet the needs of the communities in which the development occurred and truly hinders economic growth in those communities. For an agency to be in the position of being forced to make refunds clearly defeats the purpose for which DIF funds are collected.

Spend or Refund Deadline Implied

Under the MFA, the five-year reporting requirement essentially acts as a deadline for spending mitigation fees, requiring local agencies annually to review and justify the continued holding of any unexpended funds during the five-year period. If not properly justified, the agency is required to refund those funds to property owners⁶³ – thus effectively making the five-year milestone a deadline for an agency to utilize the funds collected for the needed infrastructure projects, or at least to report the timeline on which the completed improvements are anticipated.

As the *Walker* court opined, “[T]his reexamination and refund requirement prevent a local agency from collecting and holding a development fee for an extended period of time without a clear and demonstrable plan to use the fee for the purpose it was imposed.”⁶⁴

In *Walker*, San Clemente claimed the MFA did not require it to provide any further detail because the City was still in the process of identifying specific improvement projects to be funded, and therefore nothing of any significance had changed since the City made its original findings to support the fee. The court did not buy this argument and ruled, “The City’s claim it had not yet identified the specific improvements it intended to finance with the...fee does not make the City’s finding adequate.”⁶⁵

The City had established the fee in 1989 and was still holding the funds through 2009. The court found “the city could not claim it did not know what projects it intended to finance with the unexpended fees and continue to retain those fees.”⁶⁶

Similarly, the *Hamilton* court held, “[T]he if-then nature of the statutory mandate (if the agency fails to make the required findings, then it must refund the unused fees)” is consistent with the manifest purpose of the statute “to guard against unjustified fee retention by a local agency.”⁶⁷

Even with a legislatively adopted fee, requiring development to pay for infrastructure that is not needed for twenty years erodes the required nexus determination. In addition, any fees collected now will likely be a fraction of the real cost to develop improvements in another twenty years, effectively placing an agency in a situation where it is chasing an ever-increasing goal.

Nonetheless, the City summarily approves its DIF Annual Reports with the statement: “[T]here have been no refunds made for unexpended portions of fees as **such refunds have not been required**” [Emphasis added]. This is strikingly similar to the argument made by San Clemente in *Walker*, where the court entered judgment against San Clemente in the amount of \$10.5 million in unexpended impact fees to be refunded to the current property owners on which the fees had been imposed. As of November 2022, San Clemente has refunded over 81% of those funds.⁶⁸

Because the City has never proactively or voluntarily refunded any collected DIF funds held longer than five years, despite having been informed of the risks of its conduct, the potential liability is obvious and enormous. More importantly, it means that many City communities will be left short of needed parks, fire stations, libraries, and street improvements.

Required Expenditure Findings

According to the City’s FY 2023 Annual Report, the DIF funds collected and that remained on account for over five years are reported and claimed to meet the requirements of § 66001(d). That Report provides a list of “Findings for Funds Collected over Five Years Ago;” however, the tabular data presented in the City’s report only accounts for \$61.9 million, or 35% of the total of \$178.8 million⁶⁹ reported in funds held longer than five years.

The question becomes: “Should the City include in the annual report an accounting of all the funds held in DIF accounts, i.e., the full \$508.4 million or, only the funds held longer than five years, i.e., the \$178.8 million as reflected in the DIF Funds Report?”

Hamilton provides the answer: “Section 66001(d)(1) requires that a local agency make five-year findings for the fifth fiscal year **after the first deposit of a fee into an account or fund** [emphasis added] and at five-year intervals thereafter. Five-year findings must report all unexpended fees in the account or fund, **irrespective of the date at which the fees were deposited** [emphasis added], as long as the account or fund during the five year period contained a positive balance of unexpended fees.”⁷⁰

The court further clarified that “following the first deposit into the account or fund § 66001(d)(1) can only refer to one date – the date the agency **first began to collect that mitigation fee**. [emphasis added]. If the requirement to make five-year findings applied only to those fees in the funds deposited more than five years prior, the five-year findings would not accurately reflect the portion of the account or fund remaining unexpended. Nor would it appear to satisfy the statutory purpose of requiring the local agency to reexamine the necessity for the unexpended balance of the fee”⁷¹

When the ruling in *Hamilton* is considered, the City is clearly remiss in not accounting for (at least) the remaining balance of \$116,866,818 in funds held longer than five-years. However, the GJ believes, based on the legal precedent set in *Hamilton*, the City must start reporting on the full balance of \$508.4 million not just the \$178.8 million held on account more than five years.

Belated or Rubber-Stamped Findings Do Not Satisfy the MFA

In *Walker*⁷² plaintiffs had paid an impact fee to cover parking to mitigate development impacts. San Clemente’s subsequent annual capital budgets continued to reflect prospective development of a parking garage without a specific timeline for its construction.

In *Walker*,⁷³ San Clemente filed its 2004 Five-Year Report for a Beach Impact Parking Fee per the requirements of the MFA. In 2009 the city once again filed the Five-Year DIF Report, which was unchanged from 2004.

The court in *Walker*⁷⁴ was highly critical of San Clemente’s 2009 reliance on prior reports and the original findings made when the fee was adopted in 1989. According to the court, “[T]he five-year findings requirement imposed a duty on the city to reexamine the need for the

unexpended fees. The City may not rely on findings it made twenty years earlier to justify the original establishment of the impact fee or the findings it made thirteen years earlier to justify reducing the amount of the fee. Instead, the Act required the City to make new findings, demonstrating a continuing need for improvements caused by the new development. The City failed to do so.”⁷⁵

In its review of the city’s 2009 Five-Year Report, the court concluded San Clemente had failed to discuss the relationship between the unspent fees and the purpose for which the fees were collected, failed to evaluate whether the residential developments that paid the fees had any impact on beach parking, or what the city had done since 1989 to address beach parking.

San Clemente made its next set of five-year findings in January 2019, addressing various other DIF-financed projects but omitting any mention of the parking fees. Consequently, the City effectively did not make five-year findings for the unexpended fees in the parking fund for FY 2018. The court opined, “[I]f we accepted the city could avoid refunding unexpended development fees by making any findings no matter how inadequate [or late], and the only repercussion would be another opportunity to repeat the process, that is not what the statute’s clear language requires.”⁷⁶

Similar to San Clemente, the City of San Diego has relied on outdated Community Plans, associated Financing Plans, and its Capital Improvement Plan (CIP) program to meet the justification for holding funds five years or longer. Some of these community financing plans are well over ten years or even decades old and bear little resemblance to current conditions or public needs. In effect, by referencing these same plans year after year the City is essentially rubber-stamping its antiquated nexus findings, with the same result as that addressed in *Walker*.

When funds have been held longer than five years, the City of San Diego should take seriously the importance of revisiting the nexus for the funds. If the City cannot, in all good faith, justify the continued need for funds they shall either accelerate the project by including it in the City’s next CIP budget cycle (requiring augmenting the funds from other sources if necessary) or effect a refund per the provisions of the MFA.

New Development v. Existing Deficiencies

Section 66001(g)⁷⁷ clearly states that “[a DIF] shall not include the costs attributable to existing deficiencies in public facilities but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to:

- (1) refurbish existing facilities to maintain the existing level of service, or,
- (2) achieve an adopted level of service consistent with the general plan.”

This issue was addressed in 1989, in *Bixel Associates v. City of Los Angeles*,⁷⁸ (*Bixel*) where the court reiterated that the MFA specifically prohibits using DIF to fund existing deficiencies.

The *Bixel* case focused on a ninety-seven-year-old water main as a case in point; “to what extent should a new developer pay for replacement of a water main that admittedly had a life span of fifty years and thus should have been replaced by the City forty-seven years ago?” The court ruled that “the City of Los Angeles Fee Ordinances, as they presently read, do not contain language which limits the use of the fees and the fund established to solely those installations and repairs necessitated by new development, although such limitation is mandated by the California Constitution [and the MFA].” The court awarded a summary judgment to plaintiff Bixel as a matter of law and ordered that the fee paid under protest be refunded.

Similarly, the Confidential Audit Memorandum provided San Diego management identified eleven projects in the City’s CIP Budget where it appeared the City was using DIF to finance costs attributable to existing deficiencies on at least eleven projects which, according to the City’s Auditor would violate the clear language of the MFA and the precedent set by *Bixel* in 1989.

At that time, the Auditor recommended that an opinion was needed by the City Attorney regarding whether this violated the MFA. The outcome of this recommendation has not been made public, and it is unclear whether the City Attorney confirmed the Auditor’s concerns regarding the eleven projects as likely noncompliant.

It is also unclear whether the City has continued its practice of using DIF to finance existing deficiencies in public facilities. The take-away is that the City’s DIF nexus studies (community

financing plans and CIP programs) currently do not provide a safeguard prohibiting DIF funds from being used to finance existing deficiencies.

Expenditure of DIF to Create Build Better San Diego DIF

In its review of the City's DIF expenditures, the Independent Auditor retained by the Grand Jury determined that \$720,159.87 of DIF funds taken from twenty-two identified community-based (lockbox) DIF accounts was used in the creation of the alternate Build Better SD city-wide DIF program. The funds financed the labor and consultant services to create the nexus studies for the four new DIF accounts. In the Independent Auditor's opinion, and that of the GJ, the use of community-based DIF to create a new, City-wide program, does not comply with the following MFA requirements:

- Section 66001(a): DIF funds must be used directly on projects within the communities where they were collected, including administrative costs related to those projects and community accounts.
- Section 66001(b): The adoption and collection of DIF fees must include a breakdown demonstrating the relationship between the fee amount and its intended use.

The Independent Auditor further noted each [community] Impact Fee Study or Facilities Financing Plan provides guidance on DIF administrative fees. Noncompliance with the use of DIF administration fees could lead to legal challenges and/or refunds of unexpended fees.

San Diego's Lack of DIF Refund Provisions

San Diego's community-based financing plans do not include refund provisions nor do the enabling Council resolutions or ordinances. Since San Diego Municipal Code § 142.0640⁷⁹ governing DIF does not provide guidance or specific direction regarding compliance with MFA requirements or the refund provisions,⁸⁰ the GJ recommends the City Council reevaluate and amend its policies to address the mandatory provisions of the MFA.

For the City to avoid legal challenges to its DIF Program requires full compliance with MFA fee creation, amendments, management, reporting and refunding requirements. As San Clemente and other California agencies that have been the target of legal challenges have learned the hard

way, the courts are going to apply the MFA strictly according to its terms, and the obvious way to avoid missteps is to ensure that their DIF Programs' enabling studies and ordinances are up to date and the nexus findings remain relevant.

The GJ's Audit Request (MFA § 60023)

As discussed in this Report, the City has failed to timely publish DIF Annual Reports for at least the last four fiscal years.⁸¹ And further, those Annual Reports were substantively inadequate for the reasons discussed herein and in both the 2018 Confidential Audit Memorandum and the 2025 Grand Jury's Independent Audit.

MFA § 66023, reiterates the right of any person to request an audit, specifying that the request may be made to determine:

- Whether the fee or charge exceeds the amount reasonably necessary to cover the cost of the public facility or service provided,
- When the revenue generated by the fee is scheduled to be expended, and
- When the public improvement is scheduled to be completed [See, MFA § 66023(a)(1)(A)-(C)]

Further, where a request for audit is made, the local agency's legislative body may retain an independent auditor to conduct an audit. [See, MFA §§ 66023(a)(2)(A)-(B).] The cost of an independent auditor is borne by the requesting party. [MFA§ 66023(c)]

However, Section 66023(h) provides that "if a local agency does not comply with subdivision (b) of Section 66006 [annual reporting requirements] for three consecutive years, both of the following shall apply:

- (1) The local agency shall not require a deposit for an independent audit requested pursuant to this section and shall pay the cost of the audit.
- (2) The independent audit conducted shall include each consecutive year the local agency did not comply with subdivision (b) of Section 66006."

By and through this Report, the 2024-2025 GJ is invoking the audit provisions of MFA § 60023(h), initiating the process by which the City is required to retain and pay for the services of an independent auditor covering at a minimum, FY 2021 through 2024, and prior to those years for each year of the City's DIF that Annual Reports were not timely filed. Based on document availability on the City's website, the GJ could not find an annual report published prior to the 180-day deadline since FY 2015 (a total of 9 years' reporting subject to audit).

The GJ recommends the audit be conducted by a recognized outside firm (that has had no past professional relationship with the City) and includes both a performance and a financial audit to investigate the City's compliance with the reporting requirements of the MFA including Sections 66001 and 66006. The audit shall also include, but is not limited to, identification of the amounts and prospective recipients of refunds mandated by the allegations of miss-used funds as disclosed in the 2018 Confidential Audit Memorandum.

Further, in the interest of full transparency, the GJ recommends the City make public the results of the independent audit in the manner required by MFA § 66006(e)(2) by providing a link to the page on the City's internet website where the information made public pursuant to MFA § 66006(1)(b) is available for review. Either the results of the independent audit, or information regarding when the City plans to conduct the audit, shall also be provided to the Grand Jury with the City's official response to this Report.

Suggested Scope of the Independent Performance and Financial Audits

The GJ requests the City commission an Independent DIF Audit to include:

- A complete forensic financial audit of the establishment, imposition, collection, and expenditures of DIF from commencing in FY 2015 through FY 2024, including a detailed examination of all fund transactions (income, transfers, expenditures) made following the City's notice of issues raised in the 2018 Confidential Audit Memorandum, involving any of the funds and accounts referenced in that Report.
- A performance audit of the City's DIF Annual Reports for the same period to assess compliance with all reporting requirements specified in §§ 66006(b)(1) and 66001(e).

- A performance audit of the City’s DIF Annual Reports, for the same period, to assess applicability and compliance with the refund provisions of §§ 66001(d)(2) and 66001(b)(1)(H).
- A performance audit of the City’s DIF Annual Reports for the same period (2015 through 2024), for compliance with all reporting requirements for loans/repayments and transfers made from and between funds per § 66006(b)(1)(G).
- A complete revision, restatement and republication of the DIF Annual Reports for at least the last four years (FY 2021 through FY 2024) demonstrating full compliance with MFA requirements.
- Review of all projects undertaken by the City and funded with DIF during the relevant period of the audit to determine whether DIF was used to fund existing deficiencies in public improvements.
- Review of the City’s methodologies and rationalization for the use of funds for administrative charges and specifically the use of DIF funds for the creation of the Build Better SD initiative.

Grand Jury Observations & Conclusions

The GJ reminds the City of the legislative purpose and importance of the MFA which is resonant throughout the statute together with the legislative findings and declaration “that untimely or improper allocation of development fees hinders economic growth and is, therefore, a matter of statewide interest and concern. It is, therefore, the intent of the Legislature that this section shall supersede all conflicting local laws and shall apply in charter cities.”

California businesses and government agencies—including charter cities such as San Diego—are expected to comply with laws by self-reporting and adhering to regulations without constant direct oversight. San Diego is a charter city, and the terms and mandatory provisions of the MFA most certainly apply to the City’s DIF Programs.

However, as this Report makes clear, the GJ has uncovered the City’s chronic failure to comply with the MFA requirements and a general mismanagement of millions of dollars of DIF funds collected from developers to mitigate the impacts of their projects in the City’s communities.

Failure to appropriately collect and expend millions of dollars in DIF collected by the City, in accordance with the developers' expectations and the communities' entitlement to local amenities such as libraries, parks, fire stations, and transportation facilities runs afoul of the law and injures the residents it is intended to protect.

Ordinarily, when faced with material deficiencies such as those revealed in the 2018 Confidential Audit Memorandum, it might be assumed that Management's response would be one of "All Hands on Deck" to formulate and effect corrective action, particularly with clear mandatory statutory requirements and judicial review and decisions that supported the Auditor's findings.

Yet, during the GJ investigation the GJ found no evidence that "profound changes" had been recommended or implemented, or even that the Confidential Audit Memorandum had been received and reviewed. The GJ interviewed City staff from the 2018-2019 timeframe and all interviewees either did not recall the Report, could not remember what actions were recommended or taken by Management, or were not involved in any actions taken. Those interviewed collectively testified that there was no "All Hands On Deck" event.

This Grand Jury report serves as a challenge to the City of San Diego to take appropriate actions to bring the DIF programs into compliance with all MFA requirements and to provide public transparency into those reformatory actions.

Additionally, to circumvent future non-compliance, the City must take immediate action to develop a clear process and procedure for educating and training City staff regarding the requirements of the MFA and proper implementation of the City's DIF Program. This includes awareness of the necessity for strict compliance and the legal and financial ramifications to the City for noncompliance.

The City must also enact a clear process for ensuring timely review and publication of public reports and a procedure by which refunds of DIF funds are made when appropriate.

Speaking for the citizens of San Diego, the GJ relies on the premise of an implied fiduciary responsibility by the City to expend the DIF funds to alleviate the impact of new development in our communities in a timely manner. We believe this timely spending of the funds is what the

citizens of San Diego—and particularly the communities affected by the development—expect and deserve. However, in lieu of that, if the City can no longer justify holding funds beyond the five-year milestone, the GJ expects the City shall initiate refunds in accordance with the MFA.

The 2024-2025 GJ hopes that this report serves as the last of the red flags the City needs to prompt action, and the findings and recommendations made herein are finally taken seriously by the City, including the Mayor and City Council, and all elected and appointed City officials, including the City Attorney, Management staff and employees.

FACTS AND FINDINGS

Fact: The California legislation referred to as the Mitigation Fee Act (MFA) was passed as Assembly Bill (AB) 1600 in 1987 and went into effect on January 1, 1989.

Fact: The MFA is codified in California Government Code §§ 66000 et seq.

Fact: The MFA provides clear language that is unequivocal and mandatory in describing the duties and responsibilities of any public agency that adopts a Development Impact Fee (DIF) program.

Fact: MFA § 66001(a) requires a clear nexus between the DIF assessed on new development projects and the public facilities to be funded by the fee—the funds must be used directly to mitigate the specific impacts created by the project.

Fact: Since its inception, the City’s community-based DIF program has collected in excess of \$1 billion with the sole purpose of mitigating the impact of development projects throughout the City’s fifty-two communities of interest.

Fact: At the close of FY 2024 the DIF Funds Report totaled in excess of \$508.4 million in DIF accounts, with approximately \$178.8 million reported to have been “held longer than five years.”

Fact: MFA § 66001(a) establishes the ‘nexus’ requirements that form the basis for the data required in the DIF Annual Reports.

Fact: MFA § 66001(d)(1) requires that “[f]or the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the

findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted.” [Detailed list omitted.]

Fact: MFA § 66001(d)(2) provides that “[w]hen findings are required by this subdivision, they shall be made in connection with the public information required by MFA § 66006(b) and, if the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund.”

Fact: As of the end of FY 2024, \$178.8 million or 41% of DIF funds held in the City’s DIF accounts have been on deposit for longer than five years.

Fact: MFA § 66006(b)(1) provides that “[f]or each separate account or fund established pursuant to § 66006(a), the local agency shall, within 180 days after the last day of each fiscal year, make available to the public, [specific] information for the fiscal year.

Finding 01: The City has not filed DIF Annual Reports in accordance with § 66006(b) for the last four fiscal years including FY 2021 through FY 2024.

Finding 02: The City has been chronically late publishing Annual DIF Reports in violation of MFA § 66006(b) since FY 2015.

Fact: MFA § 66006(a) provides that “the local agency receiving the [development impact] fee shall deposit it with the other fees for the improvement in a separate capital facilities account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the local agency.”

Fact: MFA § 66006(e) provides that “funds held longer than five years must be refunded when a legitimate need for the funds can no longer be justified.”

Fact: The City publishes on its website the Annual DIF Report each fiscal year.

Finding 03: The City does not comply with MFA §§ 66006(b)(1) and 66006(b)(1)(E) annual and § 66001(d)(1)(D) five-year reporting requirements. Reporting detail, including yearly fund balances, expenditures, and fees collected, and the five-year reporting requirements do not provide timely, objective, substantive and accurate data that meets all MFA requirements.

Fact: The MFA five-year finding requirement imposes a duty on the City to reexamine the nexus for each fee to justify the continuing need for the funds collected.

Fact: If the fee can no longer be justified, the local agency shall refund the moneys in the account or fund per MFA § 66001(d)(2).

Fact: MFA § 66008 requires that “[a] local agency shall expend a fee for public improvements, as accounted for pursuant to § 66006, solely and exclusively for the purpose or purposes, as identified in § 66006, for which the fee was collected. The fee shall not be levied, collected, or imposed for general revenue purposes.”

Fact: San Diego has fifty-two individual community-based DIF Fund “Legacy” Accounts.

Fact: The City’s DIF Annual Reports rely on the financing plans for each of the fifty-two communities to justify nexus for the mitigation fees collected.

Fact: The City Attorney has advised on two separate occasions the requirement for community plans and financing plans to be updated annually.

Finding 04: The City’s Community Plans and Financing Plans are outdated – some in excess of 10 years, or more.

Fact: The City charges each community DIF fund an administration fee to cover the costs of managing the funds.

Fact: Maximum administration fees are established in each individual community nexus study (Public Facilities Financing Plan (PFFP) or Impact Fee Study (IFS)).

Fact: The City has targeted a maximum of 5% - 8% cumulative administration fees be charged to each DIF account over the full life of each account.

Finding 05: There are instances where administration charges exceed the target percentages documented in each community PFFP or IFS. For example, one DIF account has been charged 18%. This exceeds the City’s established maximum for administrative charges.

Fact: MFA § 66001(g) provides that DIF fees shall not include costs attributable to existing deficiencies in public facilities.

Finding 06: Community-based DIF funds have been spent by the City to develop the Citywide Build Better SD DIF program, in violation of § 66001(g).

Finding 07: The City used fees collected and deposited in twenty-two of the fifty-two legacy DIF accounts, totaling \$720,159.87, titled “DIF Rebuild,” for administrative use to create the Build Better SD program.

Finding 08: The cost of developing the Build Better SD program structure should have been borne by the City’s General Fund.

Fact: MFA § 66023(a)(1) provides that “a person may request an independent audit if a local agency does not comply with § 66006(b)(1) for three consecutive years both of the following shall apply:

(1) The local agency shall pay the cost of the audit.

(2) The independent audit conducted shall include each consecutive year the local agency did not comply with § 66006(b).

Fact: MFA § 66023(f) intent is clear: “The Legislature finds and declares that oversight of local agency fees is a matter of statewide interest and concern. It is therefore the intent of the Legislature that this chapter shall supersede all conflicting local laws and shall apply in charter cities.”

Fact: The 2018 Confidential Audit Memorandum revealed areas in which the City was noncompliant to the requirements of the MFA.

Fact: There are red flags from as far back as 2011 that alerted City management of the potential legal compliance deficiencies in administration of the City’s DIF Program.

Fact: The GJ interviewed City Management staff from the 2018-2019 timeframe and all interviewees either did not recall the Confidential Audit Memorandum, could not remember what actions were recommended or taken by Management, or claimed they were not involved in any actions taken.

Fact: The GJ interviewed City employees, who are involved in direct administration of the DIF Program, who demonstrated little knowledge or awareness of MFA requirements or the severity of the consequences for non-compliance.

Finding 09: The GJ investigation concluded that despite warning signs, the City has failed to take appropriate actions to correct problems or take corrective action in administering the DIF program.

RECOMMENDATIONS

The 2024/2025 San Diego County Grand Jury recommends that the City of San Diego Mayor and City Council:

R-01 Initiate, within 90 days, an outside, independent, performance, and financial audit of all City community-based and city-wide DIF Accounts as required by MFA § 60023(h), the scope of which is recommended in this Report.

R-02 Publish all results of the outside independent audit on the City’s website withing 90 days of completion and notify the public to that effect.

R-03 Publish the FY 2024 Annual DIF Report in full compliance with all requirements of the MFA within 90 days of this report.

R-04 Immediately place a freeze on the expenditure, loan, or transfer of community-based “lockbox” DIF funds until such time as all recommendations and issues detailed in this Report have been corrected and the results of the outside independent audit requested, pursuant to § 60023(h), is complete, published, and corrective action has been completed.

R-05 Amend Council Policy No. 000-31 Capital Improvement Program Transparency to include:

- The City’s annual budget hearings shall include focus on the priority for maximizing the use of DIF funds.
- Staff reports submitted at budget hearings shall include DIF based projects, as this requirement directly finds basis for the five-year reporting requirements of the MFA.

- Staff reports on the accomplishments for the current fiscal year and the next fiscal year's proposed CIP budget shall include DIF based projects, as this requirement directly finds basis from the five-year reporting requirements of the MFA.
- Amend the five-year CIP Budget Document to include DIF funded capital infrastructure projects for funds held longer than five-years and present a projection of additional funding sources required over the next five fiscal years.

R-06 Amend Council Policy No. 800-14, Prioritizing Capital Improvement Program Projects, to include:

- Commitment to the timely spending of DIF funds within a five-year timeframe required by the MFA and strict reporting regarding accounting of, and justification for, holding any funds longer than five-years.
- Commitment of the City recognizing the importance of the mandatory spend or refund requirements of the MFA and a policy for proactive refunding funds that cannot be justified to be held longer.
- Limits on administration fees that can be charged to DIF funds accounts both annually and cumulatively through the life of each fund.
- Enforcement of annual reporting requirements, both substantively and specifically in meeting the 180 days after Fiscal Year end reporting deadline.
- Necessity for the regular updates of all Nexus studies and financing plans for both the city-wide and community-based DIF funds accounts. For the community-based funds this is critical in meeting the five-year reporting requirements until such time as the City has fully transitioned to the City-wide funds collection.
- Commitment to prioritizing capital improvements that were the basis and justification for DIF funds collection, ensuring those infrastructure needs are addressed first in the annual CIP process and recognizing the DIF funds must be considered the first funding source for projects to be included in the CIP.

R-07 Amend the San Diego Municipal Code to require Community Plans and associated PFFPs and IFSs to be updated at a minimum of every five years to coincide with the five-year finding requirement.

R-08 Put in place accounting safeguards that cap administration fee charges to DIF accounts consistent with generally applicable San Diego Municipal Code limits and justified by evidence that the fees are reasonable and do not collect more than the reasonable cost of service. This shall include provisions to provide ongoing visibility to management of funds spent to date for each DIF funds account.

R-09 Re-evaluate nexus compliance for all DIF funds held for longer than five years. Projects in which the nexus can no longer be justified shall be refunded pursuant to MFA requirements.

R-10 Task the City’s Planning Department to establish necessary processes and procedures to ensure compliant management of DIF funds and timely generation of DIF Annual Reports to comply with the MFA requirement for publication within 180 days of each fiscal year end.

R-11 Initiate a return of the \$720,159.87 in funds that were expended to develop Build Better SD to their respective community DIF accounts.

R-12 Ensure that moving forward the Build Better SD administration and Nexus study updates are paid from the City’s General Fund.

R-14: Direct the Planning Department to develop and initiate an education and training program for all City Management and staff employees who are charged with administering the City’s DIF programs.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors. Furthermore, California Penal

Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor. (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	R-01 through R-14	9/30/25
City Council, City San Diego	R-01 through R-14	9/30/25

¹ CA Govt Code §§ 66000 et seq., <https://law.justia.com/codes/california/code-gov/title-7/division-1/chapter-5/section-66000/>

² The exact amount is difficult to glean as financial reports available on the City’s website are no longer available.

³ “Redux” refers to the fact that the subject matter of the 2022-2023 Grand Jury Report is being brought back with additional information and confirmation of issues initially raised, which appear historically to have been known and disregarded (or ignored) by City management (Management), legal counsel and staff.]

⁴ City of San Diego Development Impact Fees - What’s the DIF?, San Diego County Grand Jury, May 30, 2023, <https://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2022-2023/City%20Of%20San%20Diego%20Development%20Impact%20Fees.pdf>

⁵ The GJ recommended the San Diego City Attorney perform a legal compliance review, and the Office of the City Auditor perform a Financial and Performance Audit of the City’s DIF program for strict compliance with the annual and five-year nexus reporting requirements of the MFA.

⁶ City of San Diego Response to San Diego County Grand Jury Report Titled “City of San Diego Development Impact Fees - What’s the DIF?”, November 14, 2023, p.2, <https://www.sandiego.gov/sites/default/files/2024-01/gjr-cr-development-impact-fees.pdf>

⁷ Performance Audit of Development Impact Fees, OCA 18-022, June 2018, https://www.sandiego.gov/sites/default/files/18-022_development_impact_fee_0.pdf

⁸ The 2024-2025 Grand Jury reviewed a copy of the Confidential Audit Memorandum, referred to hereinafter as the Confidential Audit Memorandum. This Memorandum is not publicly available.

⁹ “Management” refers to City staff who have supervisory or administrative responsibility for administering the City’s DIF Program.

¹⁰ MFA § 66006(a) restricts expenditure of those fees *solely* for the purpose for which the fee was collected.

¹¹ A Priority 1 recommendation is made when fraud or serious violations are being committed; significant fiscal and/or equivalent non-fiscal losses are occurring, costly and/or detrimental operational inefficiencies are taking place, a significant internal control weakness has been identified and the potential for incurring significant fiscal and/or equivalent non-fiscal losses exists.

¹² *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350 (Pet. for Rev. denied, Nov. 10, 2015), <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>

¹³ *Hamilton & High v. City of Palo Alto* (2023) 89 Cal.App.5th 528 (Pet. for Rev. denied, July 19, 2023), <https://law.justia.com/cases/california/court-of-appeal/2023/h049425m.html>

¹⁴ Proposed Updates to Facilities Benefit Assessment and Development Impact Fee Ordinances, RC-2011-28, Office of the City Attorney, Jan Goldsmith, July 19, 2011, <https://docs.sandiego.gov/cityattorneyreports/RC-2011-28.pdf>, at pp. 2, 5-7.

¹⁵ An FBA is a Facilities Benefit Assessment and for all practical purposes, including this Report, as the same as a DIF.

¹⁶ Note: seven years later this is one of the findings in the 2018 Confidential Audit Memorandum.

¹⁷ <https://law.justia.com/codes/california/code-gov/title-7/division-1/chapter-5/section-66000/>

¹⁸ San Diego Municipal Code § 61.2212 Annual Adjustment of Facilities Benefit Assessments (Added 8–25–1980 by O–15318 N.S.) (Repealed 4-6-2016 by O-20627 N.S.; effective 5-6-2016.) https://docs.sandiego.gov/municode_history/Chpt%2006%20History%20Tables.pdf

¹⁹ Requirements for Annual Adjustment of Facilities Benefit Assessments and Prepayment of Assessments, Council Policy N. 600-36, https://docs.sandiego.gov/councilpolicies/cpd_600-36.pdf

²⁰ Proposed Updates to Facilities Benefit Assessment and Development Impact Fee Ordinances, RC-2011-28, Office of the City Attorney, Jan Goldsmith, July 19, 2011, <https://docs.sandiego.gov/cityattorneyreports/RC-2011-28.pdf>, at pp. 2, 5-7.

²¹ https://docs.sandiego.gov/council_reso_ordinance/rao2012/R-307565.pdf

²² Currently the City makes updates to individual community plans on roughly a ten-year cycle. Of the fifty-two community plans there are usually, at any given time, approximately five plans in the update process.

²³ Public Facilities Financing Plan Update Considerations, RC-2013-14, Office of the City Attorney, Jan Goldsmith, September 6, 2013, <https://docs.sandiego.gov/cityattorneyreports/RC-2013-14.pdf>

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- ²⁴ San Diego Municipal Code § 61.2212 dealt with the process of adjusting the amount of facilities benefit assessments on an annual basis.
- ²⁵ Repealed 4-6-2016 by O-20627 N.S.; effective 5-6-2016. Note: The repeal of San Diego Municipal Code § 61.2212 occurred soon after the *Walker v. San Clemente* decision was published.
- ²⁶ <https://law.justia.com/codes/california/code-gov/title-7/division-1/chapter-5/section-66000/>
- ²⁷ This was also identified as an issue in the 2018 Confidential Audit Memorandum to Management.
- ²⁸ Overview and Challenges Related to Public Facilities Financing Plan Updates, IBA Report 14-23, June 2014, https://www.sandiego.gov/sites/default/files/14_23_140609.pdf, pp. 4-5.
- ²⁹ *Walker v. City of San Clemente*, supra, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ³⁰ Technical Analysis – Evaluation of DIF Methodologies, Prepared for The City of San Diego. This document is not published on the City’s website but was reviewed by the 2024-2025 Grand Jury.
- ³¹ City of San Diego Development Impact Fees - What’s the DIF?, San Diego County Grand Jury, May 30, 2023, <https://www.sandiegocounty.gov/content/dam/sdc/grandjury/reports/2022-2023/City%20Of%20San%20Diego%20Development%20Impact%20Fees.pdf>
- ³² *Hamilton & High v. City of Palo Alto*, 2023, <https://caselaw.findlaw.com/court/ca-court-of-appeal/2193685.html>
- ³³ The appellate court in *Hamilton* ruled DIF funds must be refunded but did not determine how much or what method. The specific amount and methodology of return was remanded to the trial court to decide.
- ³⁴ City of San Diego Community Planning Groups, <https://www.sandiego.gov/planning/community-plans>
- ³⁵ These are the PFFP and IFS documents.
- ³⁶ This report is limited to community-based legacy/lockbox funds – this GJ is not challenging how DIF fees were established, the amount of the fees or the nexus findings which support the legacy/lockbox DIF.
- ³⁷ <https://www.sandiego.gov/planning/work/public-spaces/reports>
- ³⁸ The City of San Diego’s Fiscal Year ends June 30th. 180 days hence is December 28th.
- ³⁹ City of San Diego Build Better SD, <https://www.sandiego.gov/buildbettersd>
- ⁴⁰ Total funds include citywide DIF funds collected to date plus the legacy community-based funds.
- ⁴¹ City of San Diego Development Impact Fees Funds Report, Fiscal Year Ending June 30, 2024, (FY2024), <https://www.sandiego.gov/sites/default/files/2025-03/funds-report.pdf>
- ⁴² The Development Impact Fee Annual Report, FY2024, overdue since December 28, 2024, had not been published as of the date of this Report.
- ⁴³ City of San Diego Development Impact Fees Funds Report for The Fiscal Year Ending June 30, 2023, Issued March 13, 2024, <https://www.sandiego.gov/sites/default/files/2025-02/development-impact-fees-funds-report-fiscal-year-2023.pdf>
- ⁴⁴ The report does not differentiate the sub-account in which the five-year funds reside, i.e., one cannot tell whether the funds are for Parks, Fire, Library or Streets.
- ⁴⁵ § 66006(b)(1)(E) requires “identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.”
- ⁴⁶ § 66006(b)(1)(F)(i) requires “identification of an approximate date by which the construction of the public improvement will commence...”
- ⁴⁷ According to California Government Code, General Provisions, § 14 the term “‘shall’ is mandatory and may’ is permissive.” Additionally, San Diego Municipal Code §11.0209, General Rules of Interpretation of Ordinances, parrots the same California Government Code definition.
- ⁴⁸ “If the administrative costs of refunding unexpended revenues...exceed the amount to be refunded, the local agency, after a public hearing, notice of which has been published pursuant to § 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which fees are collected subject to this chapter and which serves the project on which the fee was originally imposed.”
- ⁴⁹ San Diego’s Fiscal Year is July 1st through June 30th.
- ⁵⁰ For San Diego, 180 days from fiscal year end is December 28th each year. This finding of noncompliance was confirmed by the independent Auditor.
- ⁵¹ The DIF Annual Report for FY 2023 was approved by City Council March 5, 2025, via Resolution R-316039.

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- ⁵² City of San Diego development Impact Fees FY 2015 Annual Report, December 31, 2015, https://www.sandiego.gov/sites/default/files/development_impact_fees_annual_report_-_fiscal_year_2015.pdf
- ⁵³ *Hamilton & High v. City of Palo Alto*, 2023, supra, <https://law.justia.com/cases/california/court-of-appeal/2023/h049425m.html> (Pet. for Review denied, July 2023).
- ⁵⁴ *Walker v. City of San Clemente*, supra, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁵⁵ <https://www.sandiego.gov/city-clerk/officialdocs/council-resolutions-ordinances#:~:text=What%20are%20Resolutions%20and%20Ordinances,the%20date%20of%20final%20passage.>
- ⁵⁶ A Resolution of The Council of the City of San Diego Accepting the Development Impact Fee Annual Report for FY 2023, March 5, 2025, https://docs.sandiego.gov/council_reso_ordinance/rao2025/R-316039.pdf
- ⁵⁷ City of San Diego City Charter, § 40 (City Attorney), <https://docs.sandiego.gov/citycharter/Article%20V.pdf>
- ⁵⁸ CA Govt Code §§ 66000 (2024), <https://law.justia.com/codes/california/code-gov/title-7/division-1/chapter-5/section-66000/>
- ⁵⁹ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 6, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁶⁰ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 17, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁶¹ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 3, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁶² *Hamilton & High v. City of Palo Alto* (2023) 89 Cal.App.5th 528 (Pet. for Rev. denied, July 19, 2023) <https://law.justia.com/cases/california/court-of-appeal/2023/h049425m.html>
- ⁶³ Refunds would be made to either the developer paying the DIF or to the then current record owner or owners of the lots or units, as identified on the last equalized assessment roll, of the development project or projects on a prorated basis.
- ⁶⁴ *Walker v. City of San Clemente*, 239 Cal.App.4th, 2015, P.13, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁶⁵ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P.16, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁶⁶ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 16, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁶⁷ *Hamilton & High v. City of Palo Alto* (2023) 89 Cal.App.5th 528 (Pet. for Rev. denied, July 19, 2023), P 49, <https://law.justia.com/cases/california/court-of-appeal/2023/h049425m.html>
- ⁶⁸ Beach Parking Impact Fee, City of San Clemente, November 23, 2022, <https://www.san-clemente.org/about-us/city-news/beach-parking-impact-fee#:~:text=After%20refunding%20over%2081%25%20of,such%20claims%20with%20the%20City.>
- ⁶⁹ Development Impact Fee Funds Report as of Fiscal Year Ending June 30, 2023, <https://www.sandiego.gov/sites/default/files/2025-02/development-impact-fees-funds-report-fiscal-year-2023.pdf>
- ⁷⁰ *Hamilton & High v. City of Palo Alto* (2023) 89 Cal.App.5th 528 (Pet. for Rev. denied, July 19, 2023). P. 39, <https://law.justia.com/cases/california/court-of-appeal/2023/h049425m.html>
- ⁷¹ *Hamilton & High v. City of Palo Alto* (2023) 89 Cal.App.5th 528 (Pet. for Rev. denied, July 19, 2023), P 38, <https://law.justia.com/cases/california/court-of-appeal/2023/h049425m.html>
- ⁷² *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 20, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁷³ *Walker v. City of San Clemente* (2015) 239 Cal. App. 4th 1350, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁷⁴ *Walker v. City of San Clemente*, supra, 239 Cal.App.4th at p. 1368, 192 Cal.Rptr.3d 635, P. 15, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁷⁵ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 15,16, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁷⁶ *Walker v. City of San Clemente*, (2015) 239 Cal.App.4th 1350, P. 20, <https://law.justia.com/cases/california/court-of-appeal/2015/g050552.html>
- ⁷⁷ CA Govt Code § 66000 (2024), <https://law.justia.com/codes/california/code-gov/title-7/division-1/chapter-5/section-66000/>
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⁷⁸ *Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208, <https://law.justia.com/cases/california/court-of-appeal/3d/216/1208.html>

⁷⁹ San Diego Municipal Code, § 142.0640, Development Impact Fees for Public Spaces, February 2025, <https://docs.sandiego.gov/municode/municodechapter14/ch14art02division06.pdf>

⁸⁰ Municipal Code need not explicitly include MFA provisions, as the MFA is State Legislation which supersedes the municipal code.

⁸¹ FY 2021 through 2023 according to the Audit; and FY 2024 is currently overdue.