



**City of Santa Ana**  
**20 Civic Center Plaza, Santa Ana, CA 92701**  
**Staff Report**  
**December 5, 2023**

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**TOPIC:** Central Pointe Mixed-Use Development Fee Deferral Request (1801 E Fourth Street)

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**AGENDA TITLE**

Fee Deferral Agreement for the Central Pointe Mixed-Use Development Located at 1801 E. Fourth Street

**RECOMMENDED ACTION**

Based on the discussion in this staff report, it is recommended that the City Council take one of the following two actions:

1. Deny a request by the applicant to execute a fee deferral agreement for the Central Pointe mixed-use development located at 1801 E. Fourth Street,  
OR
2. Authorize the City Manager to execute a fee deferral agreement for the Central Pointe mixed-use development located at 1801 E. Fourth Street (Agreement No. 2023-XXX).

**GOVERNMENT CODE §84308 APPLIES:** Yes

**EXECUTIVE SUMMARY**

California Government Code Section 66007 et seq. provides for applicants of development projects containing housing units to request a deferral of impact fees from the agencies that require payment of such fees upon permit issuance. While such deferral requests require approval when the development projects contain onsite affordable housing units, requests for impact fee deferrals for market-rate housing projects are subject to discretion of the local decision-making body. Staff has evaluated the Government Code's provision of discretion in the matter. The information provided by the applicant does not indicate sufficient evidence of financial hardship or other compelling factors that warrant a staff recommendation to approve the applicant's request.

## **DISCUSSION**

Jason Silver, on behalf of Ledcor and Central Pointe Phase I Development Partners LP, is requesting approval of a fee deferral agreement for the Central Pointe mixed-use development located at the vacant site collectively known as 1801 E. Fourth Street. The request is being presented to the City Council for consideration pursuant to California Government Code 66007 et seq.

### *Project and Entitlements Background*

On November 9, 2020, the Planning Commission unanimously approved Site Plan Review (SPR) No. 2020-04 by adopting Resolution No. 2020-38 for the Central Pointe mixed-use development, which consists of 644 residential units and 15,130 square feet of commercial space for the property located at 1801 East Fourth Street in the Metro East Mixed Use (MEMU) Overlay Zone. Taking into account the results of the global COVID-19 pandemic and its effects on securing funding, labor, and construction materials, and increases in interest rates, the City Council has approved two requests by the applicant for one-year entitlement extensions on July 19, 2022 and again on September 19, 2023. Entitlements for the project are now extended to November 9, 2024.

### *Request for Fee Deferral*

With the extended entitlement expiration looming, the applicant began to explore additional means to ensure the viability of the project in summer 2023. Among these steps was extending the entitlements until November 2024. However, the applicant has submitted a request to defer the payment of impact fees (Exhibit 1). The request is for the City to defer the collection of the development impact fees until prior to occupancy permit issuance instead of requiring payment of the fees at the time of building permit issuance.

### *Analysis*

The intended goal of the collection of development impact fees at the time of building permit issuance is to ensure that the payment of the fees is completed prior to the vesting of development rights by a project developer. Development impact fees for development projects include customary fees to defray costs for the City to provide development services under the permit, outside agency fees as applicable, and established development impact fees. While deferral of collection of development impact fees is not a routine practice, the Owner has submitted their request under California Government Code Section 66007 and the City is required to consider the request.

If approved, key terms of the agreement (Exhibit 2) would include:

- Fee Deferral and Amount. The deferred collection of the Development Impact Fees in the estimated amount of approximately \$5.2 million.
- Deferral Period. The development impact fees will be deferred until the final inspection or issuance of a certificate of occupancy for the project, whichever comes first.

- Extension. An extension of the Agreement may only be granted by the City Council.
- Payment Security. Payment of fees are a personal obligation of the Owner, or any successor secured by the Property, and if left unpaid, shall be collected as a special lien against the property.
- Recordation of Agreement and Lien Against Property. Upon the execution, the Agreement will be recorded in the Official Records of the County of Orange and the Agreement shall contractually bind Owner to pay the development impact fees and shall constitute a lien against the Property.

Santa Ana Municipal Code (SAMC) Sections 8-1967(A)(3) and 35-111 require payment of permit fees and residential development fees at the time of building permit issuance. California Government Code Section 66007(a) states that "any local agency that imposes any fees or charges on residential development for the construction of public improvements or facilities shall not require the payment of those fees or charges, notwithstanding any other provision of law, until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first." This section generally provides that the City shall not require the payment of development impact fees until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first.

However, pursuant to Government Code Section 66007(b)(1), "the local agency may require the payment of those fees or charges at an earlier time if (A) the local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy or (B) the fees or charges are to reimburse the local agency for expenditures previously made." Pursuant to Government Code Section 66007(b)(2)(A), the City is required to approve fee deferral requests only for projects containing onsite affordable housing units. As the subject project does not contain onsite affordable housing units, the City Council may exercise its discretion when considering the applicant's request.

While the City Council has approved fee deferral requests for projects containing onsite affordable housing units, the applicant's request is unique in that the project is entirely market-rate (no onsite affordable housing units). Moreover, the City has recently processed similar market-rate, multi-family residential developments that have confronted rising interest rates, such as the Fourth and Mortimer mixed-use development (409 & 509 E. Fourth Street), Cabrillo Crossing (1814 E. First Street), Haphan Residential (3025 W. Edinger Avenue), Legado at the Met (200 E. First American Way), Santa Ana Lyon Townhomes (717 S. Lyon Street), and The Row at Redhill (2300 S. Redhill Avenue). All of these projects were able to successfully pull permits and commence site activities during the period in which interest rates began to increase. Approval of the fee deferral would set precedence for requests from similar

developments that are either in plan check or being built in phases. If approved, these requests would result in a cascading effect to the City's budget stemming from delayed collection of impact fees. Based on these factors, the Government Code's provision of discretion in the matter, and the information provided by the applicant, there is insufficient evidence of financial hardship or other compelling factors that warrant a staff recommendation to approve the applicant's request.

### **FISCAL IMPACT**

If the applicant's request is approved, the total estimated development impact fees to be deferred for the project is estimated to be as follows:

Accounting Unit & Account No.	Fund Description	Accounting Unit Description	Amount
31213002 53300	Residential Development Fee	Park Acquisition and Development Fees	\$2,901,525.00
12015002 53700	Fire Facilities Fees	Fire Facilities Fees	\$735,403.00
04817002 50300	Transportation System Improvement Area C-2	Transportation System Area Improvement Fee	\$880,945.55
22517002 50500	Local Drainage Area V	Drainage Fee	\$79,511.96
05517002 53701	Sewer Connection Fee	Sewer Connection Fee	\$495,921
06017002 53709	Public Works Water Revenue	Connection Charge	\$130,506
<b>Total</b>			<b>\$5,223,812.51</b>

The final fee amount to be deferred will be calculated at the time of the final inspection or issuance of a certificate of occupancy for the project, whichever comes first. There is no negative fiscal impact as the deferred amount will be paid back to the City.

In addition to City of Santa Ana impact fees, the City collects fees on behalf of outside agencies. For the subject project, the applicant is also required to pay Orange County Sanitation District and Eastern Foothill Transportation Corridor impact fees. It is the applicant's responsibility to request fee deferrals directly from each outside agency for those respective impact fees.

### **EXHIBIT(S)**

1. Fee Deferral Request
2. Draft Agreement

Submitted By: Minh Thai, Executive Director of Planning and Building Agency

Approved By: Tom Hatch, Interim City Manager