

## Attachment A

## RESOLUTION NO. 22-045

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VICTORVILLE, CALIFORNIA, ADOPTING NEXUS STUDIES AND THE CAPITAL IMPROVEMENT PLAN RELATED TO THE DEVELOPMENT IMPACT FEE PROGRAM

**WHEREAS**, Victorville Municipal Code (“VMC”) Section 16-5.01.080 outlines the imposition of development impact fees applicable to all development in the City of Victorville (“City”) in accordance with applicable laws including, but not limited to, Government Code section 66000, *et seq.* (the “Mitigation Fee Act”), and allows for development impact fee amounts to be set by City Council resolution; and

**WHEREAS**, development impact fee amounts were most recently established or updated by Resolution Nos. 90-158 (Drainage), 91-219 (Sewer), 06-151 (Public Buildings, Public Safety, Parks) and 08-064 (Roads); and

**WHEREAS**, the City must periodically review development impact fees to ensure they are sufficient to mitigate the impacts of new development on the associated capital facilities and other improvements needed to maintain the existing level of public service; and

**WHEREAS**, the City has commissioned two reports from N.B.S. Government Finance Group entitled “City of Victorville Development Impact Fee Study” and “Sewer Capacity Fee Study” (attached hereto as Exhibit A), and a report from DTA entitled “Development Impact Fee Justification Study Regional Drainage Facilities” (attached hereto as Exhibit B) (collectively, the “Nexus Studies”) to analyze and establish the relationship, or nexus, between the imposition of an updated development impact fee program (“Development Impact Fees” or “Fees”) and the estimated, reasonable costs of constructing the City capital facilities for which the Fees are charged; and

**WHEREAS**, pursuant to Government Code Section 66013 (a part of the Mitigation Fee Act) the City is authorized to establish and impose facility capacity charges for public facilities in existence at the time a charge is imposed or for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or facility capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense relating to its use of existing or new public facilities (“Sewer Capacity Charges”); and

**WHEREAS**, the Nexus Studies establish updated maximum fees/charges by development type for Parks and Recreation, Fire Protection, Police, Public Buildings, Road Improvements, Sewer Capacity, and Regional Drainage, and establish new fees for Libraries and Administration of the development impact fees program; and

**WHEREAS**, City staff prepared a Capital Improvement Plan (attached hereto as Exhibit C) that establishes public facilities pursuant to Government Code section 66000(d) which the Development Impact Fees and Sewer Capacity Charges will fund; and

**WHEREAS**, on September 28, 2021, Assembly Bill 602 (“**AB 602**”) was signed into law, amending the Mitigation Fee Act to create new requirements related to nexus studies, capital improvement plans, related reporting, and public noticing that went into effect on January 1, 2022, as well as a new residential fee calculation methodology that will go into effect on July 1, 2022; and

**WHEREAS**, the Nexus Studies and the Capital Improvement Plan collectively provide the information needed to make the required findings under the Mitigation Fee Act, including those recently added under AB 602, by identifying the purpose of the fees, the use of the fees and establishing a reasonable relationship between the use of the fee, the need for the public facility, the maximum amount of the fee and the facility cost attributable to the development type upon which the fee is imposed; and

**WHEREAS**, Government Code Section 66013 further provides that when a local agency imposes Sewer Capacity Charges, those charges shall not exceed the estimated reasonable cost of providing the service for which the charge is imposed and that the facilities being funded thereby are of proportional benefit to the person or property being charged; and

**WHEREAS**, with respect to the Sewer Capacity Charges, Appendix D of the Nexus Study found in Exhibit A, and the corresponding section of the Capital Improvement Plan collectively provide the information needed to make the required findings under the Mitigation Fee Act, as well as the requirements of Government Code Sections 66013 with respect to reasonable costs and proportional benefits; and

**WHEREAS**, the Nexus Studies and Capital Improvement Plan have been made available for public review with copies on file in the City Clerk’s office and posted on the City’s website; and

**WHEREAS**, to comply with the new public noticing requirements enacted under AB 602, a 30-day advance notice of a public hearing to be held on June 7, 2022, was published in the Valley Wide Newspaper on May 6, 2022, with a second notice thereof published on May 13, 2022; and

**WHEREAS**, the City Council held and conducted a public hearing on June 7, 2022 in accordance with the duly published public hearing notice, to review and consider the adoption of the Nexus Studies and the Capital Improvement Plan; and

**WHEREAS**, adoption of the Nexus Studies will establish the maximum Development Impact Fees, including the Sewer Capacity Charges, that may be imposed by development type under the various Fee categories, but does not authorize implementation of any updated or increased Fees, which will be separately considered following a subsequent, duly noticed public hearing.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF VICTORVILLE DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The recitals set forth above are true and correct and are incorporated into this Resolution by reference together with any definitions set forth therein.

**SECTION 2.** The City Council has reviewed and hereby approves and adopts the Nexus Studies attached hereto as Exhibit A and Exhibit B, as well as the City of Victorville Capital Improvement Plan attached hereto as Exhibit C. Adoption of the Nexus Studies will establish the maximum Development Impact Fees and Sewer Capacity Charges that may be imposed by development type under the various Fee categories. Implementation of updated or increased Fees and Charges will be considered and adopted separately by the City Council following a duly noticed public hearing.

**SECTION 3.** As required by Government Code Section 66001(a), the City Council makes the following findings with respect to the Parks and Recreation, Fire Protection, Police, Public Buildings, Road Improvements, Regional Drainage, Libraries and Administration Development Impact Fees:

- A. The purpose of the Development Impact Fees is to prevent new development from reducing the quality and availability of public services provided to residents of the City by requiring new development to contribute to the cost of additional public facilities needed to meet the additional demands placed on public services by new development.
- B. The Development Impact Fees collected will be used for the acquisition, installation, and construction of the public facilities identified in the attached Nexus Studies and Capital Improvement Plan.
- C. A reasonable relationship exists between the use of Development Impact Fees and the type of development project on which the fees are imposed as described in detail in the Nexus Studies and Capital Improvement Plan.
- D. A reasonable relationship exists between the amount of the Development Impact Fees and the cost of the public facilities attributable to the development on which the Fees are imposed as indicated by the Nexus Studies. The method of allocation of the respective Fees to a particular development project bears a fair relationship, and is roughly proportional to, the development project's burden on, and benefits from, public facilities to be funded by the Development Impact Fees.

**SECTION 4.** With respect to the Sewer Capacity Charges, the City Council has reviewed the data and recommendations in Appendix D of the Nexus Study found in Exhibit A, and the corresponding section of the Capital Improvement Plan, and further finds that: (1) the rates for the Sewer Capacity Charges do not exceed the estimated reasonable cost of the services and public improvements/facilities for which such charges may be imposed; and (2) the public improvements/facilities are of proportional benefit to person or property being charged.

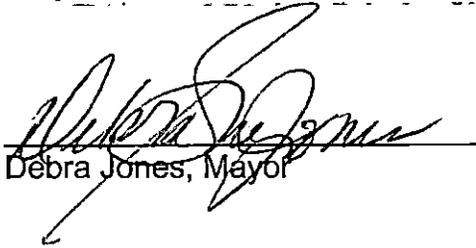
**SECTION 5.** The adoption of this Resolution is not subject to CEQA review pursuant to CEQA Guideline 15378(b)(4), which provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment are not projects subject to CEQA review.

**SECTION 6.** This Resolution shall take effect immediately upon its adoption.

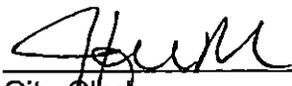
**SECTION 7.** The City Clerk shall certify to the passage and adoption of this Resolution; shall enter the same in the book of original Resolutions; and shall make a minute of passage and adoption thereof in the records of the proceedings, in the minutes of the meeting at which this Resolution is passed and adopted.

Resolution No. 22-045

PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of JUNE 2022.

  
Debra Jones, Mayor

Attest:

  
City Clerk

Approved as to form:

  
City Attorney

I, JENNIFER THOMPSON, City Clerk of the City of Victorville and ex-officio Clerk to the City Council of said City, do hereby certify that the foregoing is a true and correct copy of Resolution No. 22-045 which was adopted at a regular meeting held on the 7<sup>th</sup> day of June 2022, by the following roll call vote, to wit:

AYES: Mayor Jones, Councilmember Becerra, and Councilmember Irving

NOES: Councilmember Gomez

ABSENT: None

ABSTAIN: None



Item Number: 2

**City Council / Board of Directors**

**Public Hearing(s)**

**Meeting of: June 7, 2022**

**Submitted By:**

Jenele Davidson, Deputy City Manager

**Subject:**

Development Impact Fee (DIF) Nexus Studies, Capital Improvement Plan and Annual Reports

**Recommendation:**

The Honorable City Council and Victorville Water District Board of Directors (District Board):

1. Open and conduct the Public Hearing;
2. Close the Public Hearing;
3. Adopt Resolution Nos. 22-045 and VWD 22-005, adopting the Nexus Studies and Capital Improvement Plan related to the Development Impact Fee Program; and
4. Adopt Resolution No. 22-053 approving the annual AB 1600 reports for Fiscal Years 2016-2017 through 2020-2021 and making the associated five-year findings.

**Fiscal Impact:**

There is no fiscal impact directly associated with the recommended actions. Adopting the Nexus Studies will establish the maximum fees/charges that may be imposed upon new development by development type and under each fee/charge category (Parks and Recreation; Fire Protection; Police; Public Buildings; Road Improvements; Sewer Capacity; Water System Capacity; Regional Drainage; Libraries and Administration) but will not authorize implementation of any updated or increased fees. Such action will be considered under a separate Public Hearing, and individual Capital Improvement Plan projects funded by DIF or Capacity Charges will follow the applicable procurement protocols established by the Victorville Municipal Code ("V.M.C.") on a per project basis.

**Background:**

Development Impact Fees (DIF) are one-time fees assessed on new development to fund the cost of providing municipal facilities to serve the impact created by new development. The authorization for a local jurisdiction to collect DIF and Capacity Charges exists

through the enactment of California Government Code sections 66001 through 66025 (also known as the "Mitigation Fee Act" and sometimes referred to as "AB 1600" or "AB 602"). Additionally, under V.M.C. Section 16-5.01.080, development impact fees are applicable to all development in the City of Victorville.

The Mitigation Fee Act is premised on the concept that new development pays its own way or, put another way, new development must mitigate its own impacts on the City's infrastructure. For the City to levy DIF, a comprehensive study must be completed to verify there is a reasonable relationship between the purpose of the fee, the fee's use, and the type of development project on which the fee is imposed. Capacity Charges must also be studied to ensure that the charges do not exceed the estimated reasonable cost of the services and public improvements/facilities for which the charges are imposed and are of proportional benefit to the person/property being charged.

The California State Legislature passed AB 602 in 2021, which modified the Mitigation Fee Act and created new requirements relative to impact fees. Changes went into effect on January 1, 2022 and included additional stipulations that will apply to studies adopted after July 1, 2022. For studies adopted before July 1, 2022, changes include a requirement to adopt a nexus study at a public hearing with a thirty (30) day public notice and large jurisdictions, defined as counties of 250,000 or more and cities within those counties, must also adopt a capital improvement plan as part of the nexus study. AB 602 further established that the nexus study be updated at least every eight (8) years.

It is important that the City/District periodically review DIF and Capacity Charges to ensure fees/charges are sufficient to mitigate the impacts of new development on the associated capital facilities and other improvements needed to maintain the existing level of service. The City's last DIF update was done in 2008 for Roads; 2006 for Parks & Recreation, Public Buildings and Public Safety; and 1990 for Drainage. Water System Capacity Charges were last updated in 2013 and Sewer Capacity Charges were last updated in 1991.

On August 20, 2019, the City Council approved a professional service agreement with N.B.S. Government Finance Group (N.B.S.) for multiple financial studies, one of which was an updated DIF study. A separate study with N.B.S. had been previously approved for a Sewer and Recycled Water Rate and Capacity Study update to ensure the capacity charges comply with the legal requirements pursuant to Government Code Section 66013 and industry standards to serve new connections or future customers. Then, on February 18, 2020, City Council approved a professional service agreement with David Taussig and Associates (D.T.A.) to provide an updated analysis of the Regional Drainage Development Impact Fee Study. Collectively, these three studies are known as the "Nexus Studies" and are included as Attachments C and D.

On March 17, 2020, shortly after the Nexus Studies were initiated, the City declared a local state of emergency in response to the COVID-19 outbreak. As a result, the projects were significantly delayed as staff resources shifted to address the COVID-19 pandemic at the local level. As the needs of the pandemic lessened, staff worked with the

consultants to resume the projects. On June 1, 2021, the City Council approved an amendment to the contract with D.T.A. to finalize the Regional Drainage Development Impact Fee Study as updates were needed based upon the adoption of the SCLA Specific Plan. On March 15, 2022, City Council approved Amendment No. 3 with N.B.S. to finalize the DIF study.

On March 10, 2022, City staff hosted a stakeholder meeting inviting development partners to review the Draft Nexus Studies. During this meeting staff provided a presentation and example projects to help illustrate the difference between current DIF and Capacity Charges and the maximum DIF and Capacity Charges established in the Draft Nexus Studies. During this meeting one stakeholder questioned the availability of the annual AB 1600 reports as required under the Mitigation Fee Act and now required to be posted on the City's website under AB 602. Upon further research, staff determined that these annual reports had not been prepared and brought forward to the Council in a timely manner, prompting staff to prepare reports for the past five fiscal years, which have been included as Attachment F.

At the March 29, 2022, special meeting of the City Council/District Board a workshop was held to review the Draft Nexus Studies and sample projects with the City Council/District Board and stakeholders to solicit additional feedback.

### **Discussion:**

#### **Nexus Studies & Capital Improvement Plan**

Following the workshop held with the City Council/District Board on March 29, 2022, staff continued conversations with various stakeholders regarding the Nexus Studies for DIF and Capacity Charges. Staff and the consultants have responded to numerous questions and comments, but ultimately no significant changes were needed to finalize the Nexus Studies. The final documents are presented in Attachments C and D. These documents have been available for public review and posted on the City's website since May 23, 2022.

Staff has also compiled a Capital Improvement Plan to be adopted in conjunction with the Nexus Studies, included as Attachment E. The Capital Improvement Plan pulls from various City/District master plans to establish a comprehensive list of projects to be funded, or partially funded, from the DIF and Capacity Charges imposed. As required by the Mitigation Fee Act and AB 602, the Capital Improvement Plan includes the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with DIF or Capacity Charges, as well as the portion attributed to new development and any anticipated alternative funding sources. The Capital Improvement Plan must be reviewed and updated, if necessary, on an annual basis. The Capital Improvement Plan has been available for public review and posted on the City's website since May 23, 2022.

AB 602 requires that the Nexus Studies and associated Capital Improvement Plan be adopted before the adoption of the associated fees/charges to be imposed. Resolution No. 22-045 (Attachment A) and Resolution No. VWD 22-005 (Attachment B) propose to adopt the Nexus Studies and Capital Improvement Plan. These Resolutions do not set the DIF and Capacity Charges, but instead adopt the justification for imposing DIF and Capacity Charges as a condition of land development. The Nexus Studies, included as Exhibits A and B to the Resolutions, only establish the maximum allowable fees/charges to be assessed by development type for the development impact fee program based on this justification. The Capital Improvement Plan, included as Exhibit C to the Resolutions, outlines the various public facilities/improvements to be funded, in whole or in part, by DIF and Capacity Charges collected.

### **Annual AB 1600 Reports**

In accordance with the Mitigation Fee Act, the City imposes DIF and Capacity Charges on new development to finance various public improvements to mitigate the impact of new development on the community. The City deposits DIF and Capacity Charges into special revenue accounts for each improvement category. Government Code Sections 66006(b)(1) and 66013(d) require all local agencies that collect DIF and Capacity Charges to make available for public review a report specifying information about the DIF and Capacity Charge accounts within 180 days after the last day of each fiscal year. The annual reports are to include:

- A brief description of the type of fee in the account or fund; the amount of the fee;
- The beginning and ending fund balance of the account or fund; the amount of the fees collected, and interest earned;
- An identification of each public improvement on which fees were expended and the amount of expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees;
- An 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 on an incomplete public improvement;
- A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid and the rate of interest that the account or fund will receive on the loan; and
- The amount of refunds made due to sufficient funds being collected to complete financing on incomplete public improvements and volume of reallocation of funds made due to administrative costs of refunding unexpended revenues exceeding the amount to be refunded.

Government Code Section 6606(b)(2) requires that the report be placed on an agenda for review at a public meeting not less than 15 days after the report is made available to the public.

Furthermore, Government Code Section 66001(d)(1) requires that, if DIF remains unexpended or uncommitted five years after being collected, the local agency must make the following findings:

- The purpose to which the fees are to be put;
- A demonstration of a reasonable relationship between the fee and the purpose for which it is charged;
- All sources and amounts of funding anticipated to complete financing in incomplete improvements; and
- Approximate dates on which the funding is expected to be deposited into the appropriate account or fund.

Staff has compiled the required information to constitute the annual AB 1600 reports for Fiscal Years 2016-2017 through 2020-2021, included as Exhibit A to Resolution No. 22-053 (Attachment F). Although not completed within 180 days following the last day of the each fiscal year, the report includes sufficient information for the City Council to make the required five-year findings for the fee/charge categories that have an unexpended or uncommitted fund balance for the past five years (Public Buildings; Fire; Roads; Public Safety; Recreation and Storm Drain). For each of these fee/charge categories with an existing balance, the City has ongoing or future projects that require funding for fees/charges. Reports will be completed in a timely manner on an annual basis going forward, in conjunction with the annual review/update of the Capital Improvement Plan. Resolution No. 22-053 and the AB 1600 Reports (Exhibit A thereto) have been available for public review and posted on the City's website since May 23, 2022.

Staff recommends that the City Council/District Board adopt Resolution Nos. 22-045 and VWD 22-005 adopting the Nexus Studies commissioned by the City/District and the associated Capital Improvement Plan; and adopt Resolution No. 22-053 approving the annual AB 1600 reports for Fiscal Years 2016-2017 through 2020-2021 and making the associated five-year findings.

Staff remains available for any questions the City Council/District Board may have.

- Attachments:**
- A. Resolution No. 22-045
  - B. Resolution No. VWD 22-005
  - C. NBS City of Victorville DIF Study
  - D. DTA DIF Justification Study - Regional Drainage Facilities
  - E. Capital Improvement Plan
  - F. Resolution No. 22-053 – Annual AB 1600 Reports