# Public Comment

# Item 2

Please contact the City Clerk's Office at (209) 831-6105 with any questions.

**From:** Shivani Shibu <[redacted]>
**Sent:** Tuesday, October 21, 2025 12:17 PM
**To:** Tracy City Council <tracycitycouncil@cityoftracy.org>
**Subject:** Request to Include Statement in Record — "Items from the Audience" (October 21 City Council Meeting)



Dear Mayor, Mayor Pro Tem, and Honorable Council Members,

I respectfully request that this email be included in the public record under "Items from the Audience" for the upcoming City Council meeting on Tuesday, October 21, 2025, regarding the reconsideration of Item 4B from the October 7 meeting-the naming of the Multi-Generational Recreation Center.

At the last meeting, many Tracy residents including a remarkable number of teens and young adults spoke passionately in favor of naming the center after Dr. Nancy Young. Their heartfelt words directly challenged the claim that her name does not represent the youth of Tracy. If anything, their testimonies showed the opposite: that Dr. Young's life and leadership continue to inspire the next generation to serve their community with pride and confidence.
As a resident of Tracy Hills and a student who is attending Kimball High School, I've personally witnessed how deeply this sentiment runs. Between Tracy Hills residents and Kimball High students, more than 40 people signed in support of naming the center after Dr. Young. We share the same belief that this name represents hope, inclusion, and the spirit of a growing and unified Tracy.

Many citizens stood before you that evening to express their support, yet their voices were not given the consideration they deserved. The community's overwhelming input in favor of Dr. Young's name was clearly overlooked, even though it reflected the values and identity of the people this center is meant to serve.
It's also important to note that not all councilmembers were present during the discussion and vote. For a decision as significant as naming a landmark that represents Tracy's future, it's only fair that all elected leaders participate in that process.

Dr. Nancy Young was not just a former mayor-she was the visionary who first initiated the concept for this recreation center. Her mission was to create a place that bridges generations where children, parents, and seniors can connect and thrive together. Naming the center after her is not about politics; it's about honoring a legacy of service, unity, and leadership that continues to shape this city today.

I join the many residents who respectfully urge the Council to bring back Item 4B for reconsideration and allow a fair, transparent discussion with full council participation. I also ask that two previous “yes” voters sponsor its return so that the community’s voice can finally be heard and reflected in the decision. This is not just about a name it’s about representation, integrity, and honoring the people’s voice. The residents of Tracy deserve to see their input valued and respected.

Thank you for your time, service, and dedication to the people of Tracy.

Sincerely,
Shivani Shibu
[redacted]

# Public Comment

# Item 3.A

Please contact the City Clerk's Office at (209) 831-6105 with any questions.

**From:** Respicio, Maryknol <[redacted]>
**Sent:** Tuesday, October 21, 2025 3:57 PM
**To:** Tracy City Council <tracycitycouncil@cityoftracy.org>; Planning Admin <PlanningAdmin@cityoftracy.org>; Web - City Manager <CM@cityoftracy.org>; CAO <main-CAO@cityoftracy.org>
**Cc:** John Stanek [redacted]>; A. Michael Souza [redacted]>; John Palmer [redacted]; Van Ligten, Hans <hvanligten@rutan.com>; Lanferman, David <DLanferman@rutan.com>
**Subject:** City of Tracy - Council Meeting on October 21, 2025 / Comments on Deficient Nexus Studies for Proposed New Impact Fees



Attached please find a letter from David Lanferman regarding the above-referenced subject matter. Please let Mr. Lanferman know if you have any questions or comments.

Thank you.

**Maryknol Respicio**
Assistant to David P. Lanferman

Five Palo Alto Square, 3000 El Camino Real, Ste. 200 | Palo Alto, CA 94306
O. (650) 320-1500 | D. [redacted]

[redacted] | www.rutan.com

RUTAN
RUTAN & TUCKER, LLP

RUTAN
RUTAN & TUCKER, LLP

**David P. Lanferman**
Direct Dial: (650) 320-1507
E-mail: dlanferman@rutan.com

October 21, 2025

**VIA EMAIL**

CITY OF TRACY
Hon. Mayor Dan Arriola & Council Members
333 Civic Center Plaza
Tracy, CA 95376
tracycitycouncil@cityoftracy.org

CITY OF TRACY
Development Services Department
333 Civic Center Plaza
Tracy, CA 95376
Attn: Mr. Forrest Ebbs
Ms. Veronica Childs
PlanningAdmin@cityoftracy.org

CITY OF TRACY
Midori Lichtwardt, City Manager
333 Civic Center Plaza
Tracy, CA 95376
cm@cityoftracy.org

CITY OF TRACY
David Nefouse, City Attorney
333 Civic Center Plaza
Tracy, CA 95376
attorney@cityoftracy.org

**Re: City of Tracy – Council Meeting on October 21, 2025**

**Comments on Deficient Nexus Studies for Proposed New Impact Fees**

Dear Honorable Mayor Arriola and Members of the City Council, and City Staff:

We respectfully submit this letter on behalf of Integral Communities, Tracy Hills Holding Company LLC and its affiliates and related entities, presenting a summary of our comments on, and objections to, the proposed "new" nexus studies being presented for your consideration. Those "nexus studies" purport to justify the Council taking action to adopt increased development impact fees. We regret that we must again point out that these studies still disregard many of our previous comments and objections, as well as clear City Council direction to staff regarding the proposed fee increases.

We respectfully point out an important procedural objection at the outset: It appears that Staff may be presenting various "nexus studies" to the Council in piecemeal fashion, a few at a time, rather than presenting all of the proposed new nexus studies and proposed new fees at the same time. Such a piecemeal process unfairly deprives the Council, and the public, of the opportunity to evaluate the full package of new fees comprehensively, and is likely to obscure the magnitude of the fee increases proposed by the full package of new fees. We respectfully request, therefore, that the Council direct Staff to withdraw the current partial submittals and to submit the complete set of proposed nexus studies and proposed fees all at the same time once they are ready.

## 1. INTRODUCTION

The current versions of these studies are not "new" (with the exception of the newly-released Public Facilities Nexus Study, dated September 2025) and have not been significantly corrected to address the legal deficiencies we have previously pointed out. This letter particularly points out legal deficiencies in three (3) of the proposed nexus studies:

**Parks –** proposing fees on new SFR to be increased by 107% to $8.51/SF;

**Public Safety –** proposing fees on new SFR to be increased by 67% to $1.39/SF; and

"**Program Management**" – proposing unconstitutional new "tax," mislabeled as a "fee," at flat 5% of underlying facilities impact fees.

With regard to **Public Facilities –** as newly-revised to reflect non-fee sources of funding for several of the proposed public facilities -- the proposed PF fees on new SFR would be corrected and maintained at existing levels.

These purported "nexus studies" are still internally inconsistent, and inconsistent with the City's adopted Master Plans – and still fail to comply with controlling legal requirements in numerous critical areas. Among the various deficiencies are the use of flawed methodology, unsubstantiated assumptions regarding critical evidentiary matters, disregard of recent Court decisions clarifying the constitutional requirements applicable to development fees, and numerous failures to comply with the Legislature's recent amendments the California Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*).

Accordingly, we respectfully reiterate our prior comments on these nexus studies, as well as some additional deficiencies that have come to our attention in our most recent review of the proposed studies.

By contrast, we recognize and note with appreciation that the City has improved its analysis in the new version of the Public Facilities Nexus Study, as well as the Nexus Study for new Water Fees, which demonstrates the need for a reduction of those fees. We also note that the Public Safety Nexus Study (dated "August 2025") has been partially revised and improved, but still includes several deficiencies as detailed below.

"Before the adoption of a development fee, an impact fee nexus study shall be adopted," and the City "shall follow" all of the standards and practices specified in the Mitigation Fee Act at Gov. Code § 66016.5. Here, however, ***none*** of the four (4) purported "nexus studies" actually satisfy the statutory or constitutional requirements to provide evidentiary and analytical justification for the establishment or imposition of valid development fees. As stated by the Court of Appeal:

> The term "***nexus study***" refers to a constitutional requirement described in *Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825. As detailed in the [CEQA] Guidelines, this is the requirement that there "be an ***essential nexus*** (i.e. connection) between the mitigation measure and a legitimate governmental interest." (Guidelines, § 15126.4, subd. (a)(4)(A).) The Guidelines also require that mitigation measures be "'***roughly proportional***'" to impacts, as required by *Dolan v. City of Tigard* (1994) 512 U.S. 374. (Guidelines, § 15126.4, subd. (a)(4)(B).) (*Woodward Park HOA v. City of Fresno* (2007) 150 Cal.App.4th 683, 725.)

Our clients do not object to fees that are based on substantial and competent evidence, accurately-calculated, legally-compliant, and based on mitigating new development's "fair and proportionate share" of the reasonable costs of addressing public impacts actually caused by the new development. However, the proposed new "maximum fees" suggested by these purported nexus studies fail to meet the development community's – and Council's – expectations for reasonable and lawful development fees.

In the event that the City's development fees may be challenged in court, the City will bear the burden of proof to demonstrate the validity of its fees. And, in that case, the Court of Appeal recently emphasized: ***"It suffices to state that having rate studies, and an expert who agrees with them, is not enough***." (*Coziahr v. Otay Water Dist*. (2024) 103 Cal.App.5th 785, at 803 [invalidating a local agency's development fees].)

## 2. THE STUDIES DO NOT COMPLY WITH COUNCIL'S DIRECTIONS

These nexus studies are not only legally-deficient, but also fail to comply with the Council's explicit directions to staff and the fee consultants when these exorbitant fee proposals were last brought before the Council and were ***rejected***. At that time Council directed that any new staff proposals regarding amendments to the City's development fees should be ***revised*** and should do the following:

(1) Assure that any new development fees reflect input from the development community, "reasonable" in amount, and not so high as to deter needed new development;

(2) Re-visit the City's master plans, to reflect more accurate data and assumptions, as well as more current City Council priorities;

(3) Provide data showing how the proposed new & increased City of Tracy development fees would compare with fees charged in other comparable communities; and

(4) Include explanation and provisions regarding the City Council's discretion to adopt fee increases at less than the "maximum" lawful rates, and its discretion to "phase in" any

increased development fees over time, to avoid sudden shocks and disruption to on-going development plans and activities.

These new fee proposals unfortunately do nothing to address these Council directions.

## 3. SUMMARY OF LEGAL OBJECTIONS – GENERALLY:

The following summarizes our legal objections to deficiencies and errors which are common to all of the challenged Nexus Studies:

(1) Each of the objectionable Nexus Studies fail to comply with federal and state ***constitutional limitations*** on development fees.

(2) Each of the objectionable Nexus Studies fail to comply with the requirements of the ***Mitigation Fee Act***, including the new (2021) statutory requirements of AB 602.

(3) The Nexus Studies ***fail*** to take responsibility for assuring that the costs of new public improvements are ***fairly allocated*** between the existing community and new needs created by new development of all types. That is a key purpose for conducting a "impact fee nexus study" – *i.e.*, to accurately demonstrate that the amount of the proposed impact fees are at least "roughly proportional" to the costs of addressing the impacts of the development on which the fees are imposed, as required by the U.S. Supreme Court. Instead, the Nexus Studies claim that the "calculation of the percentage of CIP new construction projects attributable to new development" – *i.e.*, the allocation of new development's "fair share" – has purportedly been made previously in distinct "Master Plans" – and therefore these "Nexus Studies" abdicated and failed to perform that key analytic and evidentiary function.[1] To put it bluntly, the studies must affirmatively show that new development pay its fair share and no more. Therefore, impacts from existing development, and its deficiencies, must be excluded.

(4) **No "substantial evidence" as to critical assumptions used in the Nexus Studies.** To a large extent, these Nexus Studies are based on unsupported assumptions, unnamed "sources," conjecture, and speculation rather than on competent and credible evidence. *See*, e.g., *Surfside Colony, supra*, 226 Cal.App.3d at 1270 [invalidating Commission's exaction because the "opinion evidence" offered to justify the exaction was not based on relevant and "substantial evidence"]: "*Nollan* requires a close connection between the burden and the condition. At the very least, a close connection entails evidence more substantial than general studies which, because of unique or unusual wave conditions, may not even apply to the case at hand. Substantial evidence must be reasonable in nature, credible, and of solid value. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)"

[1] E.g., "Public Facilities Impact Fee Study" at p. 4; "Public Safety Impact Fee Study" at p. 4.

(5) The Nexus Studies (with possible exception of the Public Safety Nexus Study) generally fail to "adopt a ***Capital Improvement Plan*** [that meets the requirements of Gov. Code § 66002(b)] as a part of the nexus study," as is now mandated by AB 602 (Gov. Code § 66016.5(a)(6).) The Mitigation Fee Act (Gov. Code § 66002) prescribes the requirements for a compliant CIP, which must be adopted at a public hearing after appropriate public notice and disclosure of the proposed CIP, and updated annually. "A CIP indicates the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees.

> At a minimum, the use of fee revenues needs to be programmed in the jurisdiction's Five Year Capital Improvement Plan." (*Impact Fee Nexus Study Template* prepared by the Terner Center for the California Dept. of Housing and Community Development (December 2023) ("HCD Template").

(6) **Backwards Facility Planning.** The Nexus Studies indicate that they wrongly expect the planning process to work "backwards" – *i.e.*, the City intends to first adopt the Nexus Studies and impact fees and then second to work back from the studies to update the CIPs for various facilities. (*See*, Parks Nexus Study, p. 19: "The City will use the CIP facilities identified here to guide their five-year Capital Improvement Plan . . . .") That would be "putting the cart before the horse." As the Legislature made clear in AB 602, the CIP planning and approval process must come first – ***before*** the Nexus Studies are prepared. *See, e.g.*, *SummerHill Winchester LLC v. Campbell Unif. Sch. Dist*. (2018) 30 Cal.App.5th 545, 556 [court invalidated schedule of facilities fees on such grounds, i.e., that there was no adopted facilities plan identifying specific new facilities upon which to base the projected costs of speculative new facilities ostensibly "needed" by new development.]

(7) **Failure to Accurately Identify or Explain** "**Levels of Service:"** The Nexus Studies still [a] fail to accurately identify the ***existing [i.e., current] levels of service*** [LOS] for the various City facilities being "studied" as is now required by Gov. Code § 66016.5, ***and*** [b] also fail to ***explain the need for the new LOS*** that are implied by the Nexus Studies.[2]

[2] In this regard, the disputed Nexus Studies here fail to comply with the sound advice posted by the City's consultants themselves shortly after AB 602 became effective, emphasizing the new legal requirements for identification of the current "levels of service" and for justification for changes in those levels of service, in a Blog post published on September 22, 2022, by Harris & Associates. See, *Examining AB 602, Impact Fees, and the Future of Development in California*, by A. Bouley and M. Quinn: "***The law [AB 602] requires local governments to compare existing levels of service in calculating public service needs and project impact to the proposed level of service and include an explanation of why the new level of service is appropriate***."

(8) **Nexus Studies' assumptions of future infrastructure "needs" are inconsistent with Master Plan projections.** The Nexus Studies erroneously include the estimated costs of providing new facilities and improvements based assumptions of growth and increased demands that are inconsistent with the projections in the City's adopted Master Plans, and the General Plan. The amount of new infrastructure and facilities included in the Nexus Studies, and the accompanying cost estimates, exceeds the reasonably-anticipated future needs of the City as identified in Council-approved planning documents. For example, the Parks Master Plan (at p. 14) was based on projected residential population growth of "48,341 between 2020 and 2040." By contrast the Parks Nexus Study (at Table 1-1) is based on projected residential population growth of 66,902 at buildout. That approach is internally inconsistent and likely results in inflating the estimated costs of the projected new facilities by "over-sizing" them to accommodate unjustified and speculative impacts of development.

(9) **Inaccurate Assumptions of Residential "Density:"** The Nexus Studies generally "assume" – erroneously – that residential density in Tracy is 3.50 persons per household; however, the California Department of Finance reports that the true density is only 3.24 persons per household. The Nexus Studies state that they are based on DOF for "population estimates" and should be corrected to use the more accurate DOF data also for its "household density" assumptions. Correcting this erroneous assumption requires significant reduction in the amounts or rates of the proposed new impact fees.

(10) **Unfounded Assumptions re Size of Anticipated New Homes:** The Nexus Studies state that they are based on certain assumptions regarding the "average unit sizes" of new residential development anticipated to be built in Tracy in future years. The evidentiary basis for those assumptions is not specifically identified. Since these assumptions are critical elements in the calculations of the resulting fees, it is important that they be shown to be based on accurate, current, and qualified sources of information.

(11) **The Housing Element Law Recognizes That Excessive Fees Are "Constraints" on Housing Development**: Unjustified development fees are widely recognized as a major factor contributing to the high cost of housing in California. The Legislature has expressly declared that "high fees and exactions" demanded by many local governments are among the causes of our "housing crisis." (*See*, Gov. Code § 65589.5(a).) California's Housing Element Law describes such fees as "constraints" on the ability of California's communities to provide more affordable housing, thus exacerbating California's housing crisis – and explicitly requires that cities must identify and analyze their fees as constraints in their Housing Elements. (*See, e.g.*, Gov. Code § 65583(a)(5) [a city's Housing Element must include an analysis of "potential and actual governmental constraints upon the ... development of housing for all income levels, including ... fees and other exactions required of developers, ...."].) If these new and unjustified fees are adopted by the Council, the City could well be required to re-visit and revise its Housing

Element to account for the effect of these new constraints on the City's ability to meet its RHNA targets.

(12) **Failure to Provide Comparisons to Fees Charged in Other Jurisdictions**: Despite the Council's previous direction to Staff seeking data comparing Tracy's proposed new fees to fees charge in similar jurisdictions, it does not appear that these Nexus Studies do so. We believe that the new development fees proposed by these Nexus Studies for new residential development would result in Tracy charging substantially more than the fees charged in other comparable communities. The Council gave clear direction to Staff to provide this information, but we see no evidence that the requested comparative study has been prepared and provided to the public.

(13) **Time of Fee Payment:** The Nexus Studies continue to wrongly assert that the new impact fees will be collected "at the time the building permit is issued," (*e.g.*, Public Facilities Nexus Study, p. 33) which would violate Gov. Code § 66007(a) of the Mitigation Fee Act, which generally prohibits the City from demanding payment of most types of development fees from residential projects until ***the time of final inspection or certificate of occupancy***. Although the Studies now acknowledge new SB 937 (effective January 2025), further limiting the ability to demand payment of fees at building permit for "designated residential projects," the Studies fail to reconcile the inconsistent assertion that the City will collect impact fees "at the time of building permit issuance, once again, ignoring State law."

(14) **The New September 2025 version of the Public Facilities Nexus Study Appears to Correct the Previous Mis-Allocation of the Costs of Several of the Proposed Public Facilities.** The previous versions of the Public Facilities Nexus Study had claimed (p. 11, and pp. 18-19) that 100% of the estimated $14 million cost of the newly-proposed South Tracy Rec Center, and the entire 32% portion of the cost of the Aquatic Center that is not otherwise funded by grants and Measure V, and other facilities were being "allocated" to new development. However, the newly-released September 2025 version of this Nexus Study now recognizes that those facilities will be funded by other "non-fee" sources (e.g, Measure V) and recommends a reduced and more reasonable set of proposed PFF. We continue to note, however, that it is not appropriate to allocate 100% of the costs of any new "public facility" that serves the entire community solely to new development.

## 4. THE STUDIES STILL FAIL TO COMPLY WITH STATUTORY "MITIGATION FEE ACT" REQUIREMENTS FOR DEVELOPMENT FEES.

The Mitigation Fee Act (Gov't Code §§ 66000 *et seq.*), adopted in 1987, and frequently amended, imposes detailed and specific requirements on local agencies that seek to establish or impose impact fees. Section 66001(a) of the Fee Act specifies that ***in establishing or amending a fee***, the City "shall do ***all*** of the following:

(1) Identify the ***purpose*** of the fee.

(2) Identify the use to which the fee is to be put. If the use is financing public facilities, the ***facilities shall be identified . . . .***

(3) Determine ***how*** there is a ***reasonable relationship*** between the fee's ***use*** and the type of development project on which the fee is imposed.

(4) Determine ***how*** there is a ***reasonable relationship*** between the ***need*** for the public facility and the type of development project on which the fee is imposed."

In most cases, the Nexus Studies merely recite these statutory "determinations" but fails to provide any explanation or analysis or ***evidence*** to support the City Council attempting to make the necessary findings.

In addition, Section 66001(g) of the Act generally ***prohibits*** a fee from including "the cost attributable to ***existing deficiencies*** in public facilities, . . . ." (*Bixel Assoc. v. City of Los Angeles* (1989) 216 Cal.App.3d 1208.)

**AB 602**: While the Legislature significantly amended the Mitigation Fee Act in 2021 by enacting ***AB 602***, the Nexus Study itself ***ignores*** many of the new statutory requirements mandated by AB 602 for the preparation of a legally-valid "nexus study." Those amendments were in response to wide-spread concerns about the inconsistent quality of nexus studies and in order to "***add more rigor to the process for preparing and adopting impact fee nexus studies***." (Assembly Comm. on Housing & Community Development, Analysis of AB 602 (April 19, 2021.)

The new requirements added by AB 602 include:

(1) larger jurisdictions (such as the City of Tracy) must now "include a ***capital improvement plan as part of the nexus study***."

(2) a nexus study must now "***identify the existing levels of service for each public facility; and identify the proposed new level of service***;" and must ***explain*** "why the new level of service is appropriate."

(3) if the new nexus study suggests the increase of an existing fee, the City "shall ***review the assumptions of the nexus study supporting the original fee*** and ***evaluate the amount of fees collected*** under the original fee." (Gov. Code § 66016.5(a)(4).)

Although the Nexus Studies superficially acknowledge that the Legislature significantly ***amended*** the Mitigation Fee Act by enacting ***AB 602***, the Nexus Studies ***largely fail to comply*** with the new statutory requirements listed above.

## 5. THE STUDIES STILL FAIL TO COMPLY WITH CONSTITUTIONAL LIMITS ON DEVELOPMENT FEES

In addition, these nexus studies still fail to substantively comply with U.S. Supreme Court decisions tightening the constitutional limits on development exactions and fees, including the recent decision in *Sheetz v. El Dorado County* (2024 U.S. 267) holding that California courts had wrongly assumed that "legislatively adopted" fee schedules were exempt from demonstrating the "rough proportionality" required by previous Court decisions, i.e., *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391; *Koontz v. St. Johns River Water Mgt. Dist.* (2013) 570 U.S. 595 (2013).

The California Supreme Court has made it clear that fees must comply with these constituional requirements in addition to complying the the Mitigation Fee Act. See, e.g., *City of San Diego v. Board of Trustees of Calif. State Univ*. (2015) 61 Cal.4th 945, 962: "[M]itigation fees imposed on a project ***must be reasonably related and rough proportional*** to that project's impacts. (See Gov. Code, § 66001, subds. (a)(3)–(4), (b) & (g) [the Mitigation Fee Act (Gov. Code, § 66010 et seq.)]; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391 [5th Amend. requires "'rough proportionality'"]; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 866-867 [construing the Mitigation Fee Act in light of *Dolan*]; . . . ."

### A. Federal Constitutional Requirements.

The U.S. Supreme Court has held, in a series of cases under the federal Constitution, that a city seeking to impose development fees must show that the fees are both: (a) ***reasonably-related*** to impacts of development – the requirement for an "essential nexus" between the alleged impact and the exaction – and (b) at least ***rough proportionality*** to impacts of the development. See, *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987) (requiring the government to show an "essential nexus" or "causal connection" between the alleged public impact of development and the fee or exaction); *Dolan v. City of Tigard*, 512 U.S. 374 (in addition to showing a nexus, the government must show that the amount or burden of its exaction or fee is at least roughly proportional to the alleged impact of development); *Koontz v. St. Johns River Water Mgt. Dist.*, 570 U.S. 595 (2013) (both of these requirements apply to fees and monetary exactions); *Sheetz v. County of El Dorado* (2024) 601 U.S. 267 (***all*** development fees, regardless how established, must comply with both *Nollan* and *Dolan* requirements).

In *Ehrlich v. City of Culver City* (1996) 12 Cal.4th at 865, in which the California Supreme Court held that our Mitigation Fee Act (see below) embodies the same constitutional requirements as *Nollan/Dolan/Koontz*, in order to "serve the legislative purpose of protecting developers from disproportionate and excessive fees, and carry out the legislative intent of imposing a statutory relationship between monetary exaction and development project that accurately reflects the prevailing takings clause standard." (*Ehrlich*, *supra*, 12 Cal.4th at 867.)

**B. California Constitutional Requirements.**

Following voter approval of Proposition 26 (2010), purported "fees" and other charges enacted by cities are now ***presumed*** to be in the nature of "taxes" – which generally require voter approval – and which are now subject to substantive requirements (subject to a few exceptions). Importantly, under Prop 26, "[t]he local government bears the burden of establishing the exceptions. (Cal. Const. art. XIII C § 1, subd. (e).)" (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 260.) "Proposition 218 was passed by the voters ***in order to curtail discretionary models of local agency fee determination***.".)" (*Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1513.)

The substantive constitutional burdens on the City to demonstrate the justification for its fees are even more stringent. The Supreme Court recently made clear that Proposition 26 in particular applies broadly to virtually all locally-established fees and charges, and emphasized that the California Constitution (art. XIII C § 1) now shifts the burden such that that ***'[t]he local government bears the burden of proving by a preponderance of the evidence*** that [i] a levy, charge, or other exaction is not a tax, [ii] that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and [iii] ***that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity***.' (Art. XIII C, § 1, subd. (e).)" (*Zolly v. City of Oakland* (2022) 13 Cal.5th 780, 786, [emph. added].)

More specific objections to the individual Nexus Studies are detailed below.

**6. "PROGRAM MANAGEMENT" IMPACT FEE NEXUS STUDY (June 2025)**

The Staff and consultants now propose to create a separate set of stand-alone "fees" allegedly for unquantified "program management" costs, and propose a "fee" based on an flat five percent (***5%)*** of the underlying development fees – regardless of the actual "costs" of conducting such "management services." The Nexus Study fails to provide any legal authority, much less any evidence of "costs of service" to justify its proposed 5% management fee. This proposed fee would be in violation of the California Constitution and would be invalid, in any amount. Setting the "fee" as a flat percentage or surcharge is the hallmark of a "tax" – requiring voter approval. [3]

Such "management fees" are not authorized in the Mitigation Fee Act, which defines "fees" as a charge to defray "all or a portion of the cost of public ***facilities*** related to the development project. . . ." (Gov. Code § 66000(b).) The only costs that can be included in a

[3] The fact that similar "administrative costs" may have previously been built into the various underlying impact fees, rather than breaking them out as separate "management fees" as now proposed, does not in any way serve to overcome the constitutional objections to such "taxes" disguised as "fees" or to lend any validity to those charges.

development impact fee are the costs that the City may actually incur to conduct a hearing under the Fee Act. Gov. Code § 66018. Not "management services."

California law expressly ***prohibits*** the imposition of fees on new development to fund operations or maintenance of public facilities. (Gov. Code § 65913.8)

Such management fees would also be in violation of the California Constitution's prohibition on charging fees for revenue purposes such as funding "general governmental services" (art. XIII D, § 6(b)(5), or administration of other revenue programs (Cal. Const. art. XIII C, § 1(e).), *see, e.g*., *Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022 [invalidating a charge imposed by City, without voter approval, for the purpose of covering the estimated costs of administering a "rental unit user tax," imposed on residential landlord; holding the charge was a general tax].)

All local government charges must be based upon – and may not exceed – the actual or reasonable costs of providing the services for which the fees are imposed. (Cal. Const., art. XIII C.) The City has the burden to prove that the "administrative costs" to be covered by this "fee" are incurred in performing only permissible "regulatory" activities. The "administrative activities" described on page 11 of the Study are not "regulatory" but are simply routine municipal accounting responsibilities, imposed on the City by State law. The alleged costs of those activities are not recoverable in any amount by the imposition of fees on new development.

There is no evidence of any kind to support the proposed amount or the flat 5% rate of this arbitrary charge. To the contrary, the City's own evidence shows that its claimed costs of administering the various impact fee programs remains relatively steady over time – and is totally unrelated to the amount of fee revenues collected in any given year.

This proposed unlawful "management fee" must be rejected in its entirety.

## 7. PARKS IMPACT FEE NEXUS STUDY (June 2025)

The Parks Nexus Study supposedly justifies a proposed ***107% increase*** in the existing Parks Impact Fees chargeable against new single-family residences (SFR) – and a striking ***131% increase*** in Fees imposed on high-density residential development. It notes that the existing Parks Fees were adopted in January 2014, and have been increased annually using the ENR Construction Cost Index. These fees are supposedly enacted under AB 1600 (the Mitigation Fee Act), rather than the Quimby Act (applicable only to subdivisions).

These fees are comprised of two components: "Neighborhood Parks" and "Community Parks." The Study proposes "neighborhood" fees of $6.30/SF and "community" fees of $2.21/SF; Combined Park Fees would be set at ***$8.51/SF***.

The Study claims (at p. 4) that its purpose "is to incorporate the findings from the completed "Parks, Recreation, and Trails Master Plan" ["PRTMP"] (prepared by WRT and adopted by Council in October 2022) and to "update the Parks Fee Program."

**A. Comments on the Park Fee Nexus Study:**

(1) **False claim of using the "Planned Facility Methodology."** The Study wrongly claims that it uses "the Planned Facility methodology" as described in the HCD "Nexus Study Template" (by Terner Center, Dec. 2023) to calculate these Fees. However, the "methodology" described in this Study is NOT the same as that in the HCD Template. The HCD Template (at page 10) actually describes the "planned facility methodology" as follows:

> **"***Estimate the costs for future facilities needed to serve new development based on a long-range expenditure plan for these future facility costs. Allocate costs per unit of demand based on the ratio of planned facility costs to demand from new development as follows: Cost of Planned Facilities divided by New Development Demand*."

The HCD Template cited by Study emphasizes, at p.12, that "the Planned Facility methods ***require a specified list of future public facilities to calculate facility costs*** and therefore the impact fee." However, the Study itself reveals that it did not use that methodology. For example, the Study admits (at p. 19) that "the exact identification of future parks is difficult to predict" and there is no such "specified list" of future park facilities. The admitted failure to "identify" the future park facilities is also a violation of the Mitigation Fee Act, Gov. Code § 66001(a)(2): "If the use [of the fees]is financing public facilities, the facilities shall be identified."

To the contrary, the Study actually appears to use an *ad hoc* "methodology" that vaguely resembles a distinct "standards-based" approach intended to achieve a desired LOS of 4.0 acres/1000.4 However, the City does not currently provide that LOS (see below). The Study erroneously assumes that it does – overlooking the City's existing deficiencies of park acreage.

This "standards based" methodology does NOT comply with the constitutional nexus & proportionality requirements of *Nollan/Dolan/Koontz* that are now applicable to "legislatively-adopted" fee schedules following the Supreme Court's 2024 decision in *Sheetz.*

[4] "The fees are based on the future park facilities needed to maintain the adopted General Plan standard ...." (Parks Nexus Study, p. 15.)

(2) **Over-statement of the City's existing Level of Service of Park Facilities.** The Nexus Study claims that the City had 364.3 acres of parks as of 2021 when its Parks Master Plan was completed (p. 14). The Study also claims that the City's residential population was 95,615 in January 2023. The existing LOS for Parks was thus only **3.81 acres/1000** population – ***less*** than the 4.0 acres erroneously claimed in the Study, and less than the "4.0 acres/1000 standard" desired by the General Plan.

(3) **Wrongful disregard of "existing deficiency" of Park land.** Since the City's own Study shows that it only has 3.81 acres/1,000 at present, there is an obvious "existing deficiency" of at least 0.19 acres/1,000. For the current estimated population of 96,000 residents, that deficiency is equivalent to roughly 18.25 acres of park land, the costs of which cannot lawfully be imposed on new development by the new Fees. The Nexus Study fails to account for that existing deficiency. Fees on new development cannot be based on the costs of curing that existing deficiency. Gov. Code § 66001(g). To the extent that the Study (Table 2-4) assumes a "need" to acquire 267.60 acres of new park land, that should be reduced by at least 18.25 acres reflecting the "existing deficiency." (267.60 – 18.25 = 249.35 acres.) This correction should reduce the amount of the claimed costs by **at least $27 million**, at $1.5M /acre.

(4) **Failure to include a Council-adopted Capital Improvement Plan.** The Study admits that AB 602 requires that a CIP be included in the approval of a nexus study, but also admits that it cannot include a CIP for neighborhood parks (p. 19). The Study wrongly suggests that its "Table 2-5" serves as the CIP required by AB 602. However, Table 2-5 does not meet requirements of Gov. Code. 66002. This violates the Mitigation Fee Act.

(5) **Failure to Provide Any Analysis of Prior (2014) Nexus Study:** This Study also fails to comply with another AB 602 requirement: Gov. Code § 66016.5(a)(4) requires that if a nexus study purports to support the increase of an existing fee, as this does, then the City must ["shall"] "***review the assumptions of the nexus study supporting the original fee and evaluate the amount of fees collected under the original fee***." The Study states that the City last conducted a nexus study to justify its Park Fees back in 2014. This Study completely fails to provide the comparative analysis of that nexus study that is now required by AB 602.

(6) **Misleading failure to differentiate between "improved" and "unimproved" park acreage.** The Nexus Study fails to differentiate between *improved* park acreage and *unimproved* park acreage in describing the City's existing 364 acres of neighborhood and community park land. That omission is significant, and must be corrected, because the Nexus Study relies on a "standards-based" methodology. So the new Park Fees must be limited to amounts sufficient to reflect the actual existing LOS for each type of park, so if some of the existing acreage is unimproved, the Fees must be reduced to reflect the lower cost of acquiring unimproved park land at the same ratio – which, according to the Study, is roughly $250,000/acre, rather than $1.5 million. By contrast, however, the Study's

calculations of new Park Fees (at p. 15) assume that all of the future park acreage will be "improved" at six (6) times the cost of unimproved land – at estimated costs/acre of $1.49M for neighborhood parks, and $1.56M for community parks – including acquisition and construction costs.

(7) **Unsupported estimates of "park improvement" costs.** Table 2-1 in the Study indicates that the estimated costs of constructing park improvements add $1.25 - $1.32 M per acre for "park construction" and says that those cost estimates were by WRT in August 2022. However, again, the Nexus Study fails to provide a competent evidentiary foundation and qualified expertise to substantiate the cost estimates used in the Nexus Study.

(8) **Unexplained "exemption" for non-residential land uses.** The Nexus Study admits (at p. 4) that "Park Fees are not charged on non-residential land uses." This exemption for non-residential land uses is inconsistent with prevailing practices among communities that have established Park Impact Fees or In-Lieu Fees, and the Study does not explain why non-residential projects should be sheltered from these Fees. Instead, it admits (p. 8) that it simply rests "on the ***assumption*** that workers typically do not use park facilities." However, the HCD Template cited by the Nexus Study for its alleged "methodology" explains that it is the common and logical practice to include workers in the "service population" for park fee calculations. The costs of providing future parks should be shared with future non-residential development projects whose workers will also benefit from the parks.

As a result of all of these listed legal deficiencies and flaws, this Nexus Study should be referred back to the fee consultants for further work and necessary corrections.

## 8. PUBLIC FACILITIES IMPACT FEE NEXUS STUDY (September 2025)

Although previous versions of the "Public Facilities Fees" ("PFF") "nexus study" have recommended large increases in the rates of PFF, this newly-released Nexus Study appears to have been reviewed and corrected to reflect the fact, as our clients previously pointed out, that several of the proposed new public facilities will be funded 100% from sources other than development fees, e.g. Measure V, etc.

Accordingly, the Nexus Study has now been revised to reflect those "non-fee" funding sources and the resulting calculations as to justifiable development fees appear to have been adjusted, so as to suggest much more limited changes in the existing rates of PFF. The Nexus Study now recommends no increase in the PFF charged to single family residential development, and a 3% decrease in the rate applicable to multi-family residential (2-4 units) and a more modest 10% increase in PFF on "High -Density" attached (4 + units). The proposed new fees on residential development are now recommended as follows (Table ES-1):

| | |
|---|---|
| Single Family Residential | $1.60/SF |
| Multi-Family Attached (2-4 units) | $2.13/SF |
| High Density Attached (4 + units) | $3.11/SF |

We recognize and appreciate these revisions and corrections. The proposed new rates for these PFF in the September 2025 version of the Nexus Study appear to be consistent with the publicly-available information regarding the Public Facilities, and we therefore will not further pursue detailed objections to the PFF at this time. We note, however, that some of our prior comments and criticisms as to data sources, methodology, and content of the nexus study may retain validity, and we do not waive those objections while we await the Council's action on the revised Nexus Study.

## 9. PUBLIC SAFETY IMPACT FEE NEXUS STUDY (August 2025)

We recognize, and appreciate, that the City's fee consultants have also revised the previous Public Safety Nexus Study (dated June 2025) in response to public comments, and have addressed many of our previous concerns – and modestly reduced some of the proposed new "Public Safety Facilities Fees" ["PSF" fees]. This Study now addresses these fees as three (3) separate fee components: Fire; Police; and Communications, in view of the proposed spin-off of "program management" fees to a new – unlawful – standalone fee.

The Nexus Study states that the PSF fees were adopted and updated in 2014, and were further updated in August 2019, and claims that the fees have also been adjusted annually (increased) based on the ENR Construction Cost Index. Despite those updates and annual inflationary increases, the Nexus Study suggests substantial fee increases in two (2) of the three (3) categories of PSF Fees: Police facilities fees, and Fire facilities fees. The ***overall combined PSF Fees*** on new residential development would still be dramatically increased, ranging from ***67%*** for single family residential homes ($1.39/SF) to ***84%*** for high density residential development. By contrast, PSF fees on new "non-residential development" would be increased no more than 58%. (Table ES-2.)

While this version of the Study is improved, however, many of the deficiencies and inconsistencies addressed above in the context of the proposed new Park Impact Fee Nexus Study and Public Facilities Impact Fee Nexus Study are repeated in the context of the proposed new "Public Safety Facilities Fees" ["PSF" fees], and should be further addressed.

### A. Objections to the Public Safety Nexus Study:

(1) **Capital Improvement Plan?** This Study states that its projections on alleged needs for new facilities are based on the City's estimated 2040 service population, and on a revised 'mix' of proposed new facilities identified in the Public Safety Master Plan Update of December 2023 ("PSMP"). The Nexus Study (p. 4) refers to the PSMP as having

"identified $116.4 million of Capital Improvement Program (CIP) construction projects." However, the relationship between this Nexus Study and a Council-adopted CIP that complies with Gov. Code § 66002 – if any such CIP exists – remains unclear.

(2) **Improper and Inconsistent "Methodology."** The Nexus Study (p. 23) claims that it used the "Planned Facilities Method" to determine "new development's fair share" of the estimated costs of the new PSF facilities "identified as needed" in the PSMP. However, the description of that "methodology" in the Nexus Study mis-states the "Planned Facility Methodology" as described in the HCD Template. (See "Objection # 1" in the Park Fee Objections, above.) The "methodology" used in this Nexus Study is not authorized by any statute or published case law, and fails to carry the City's burden to prove a "nexus" and a "proportional" relationship to needs for facilities caused by new development.

(3) **Improper delegation of "nexus" allocation responsibility to the PSMP.** The Nexus Study claims that the proposed Fee "is based on new development's fair share of the facilities" as identified in the PSMP (p. 23.) However, it is the job of the Nexus Study, not the PSMP, to make and justify such a "fair share allocation" of the costs of the identified new facilities. The Nexus Study does not support the claim that the proposed fees "are based on new development's fair share of the facilities identified in the Master Plan."

(4) **Improper inclusion of the costs of compliance with new regulations.** The Nexus Study (p. 29) claims that changes in state law effective in 2023 will require that new City facilities be upgraded to include "electrical solar systems." However, such costs of upgrading in order to comply with new regulatory requirements are ***not*** attributable to new development, and ***cannot*** be included in a development mitigation fee program. Gov Code § 66000(g).

Although this Nexus Study has been improved, it should be referred back to the staff and consultants so that the foregoing issues can be addressed and corrected**.**

## 10. CONCLUSION

We write, with respect, to call the Council's attention to a range of concerns and potential legal issues raised by the proposed Nexus Studies and development fees, and to assist in making further corrections to those studies so that the proposed fees are in fact limited to the fairly-allocated costs of mitigating public impacts reasonably related to, and roughly proportional to, new residential development.

We note that the Staff and consultants have revised and improved the Nexus Studies for the proposed Public Facilities Fees and the proposed Public Safety Facilities Fees. While the dollar amounts of the proposed new fees for Public Facilities and Public Safety may be reduced

as a result of those revisions, there are still potential methodological and data deficiencies in all of the Nexus Studies that should be reviewed and addressed.

The "Program Management Fees" – based on a flat percentage of other fees charged, rather than on any evidence of the City's actual costs of providing services – is plainly an unconstitutional tax and should be abandoned and reconsidered based on actual costs.

We respectfully urge Council to direct Staff to conduct constructive and meaningful outreach to the development community and stakeholders such as our client to produce a set of nexus studies and other evidence that will be widely recognized as compliant with legal requirements and provide for new development to bear its fair share of the costs of addressing impacts attributable to reasonably-anticipated growth in the City. We look forward to working with the City toward those objectives.

We and our clients would welcome an opportunity to discuss these comments and concerns with the City Staff at your convenience. Thank you for your consideration.

Very truly yours,

RUTAN & TUCKER, LLP

David P. Lanferman

DPL:dl

cc: John Stanek, Integral Communities
Michael Souza, Integral Communities
John Palmer, Integral Communities
Hans Van Ligten, Rutan & Tucker