Cities Must Carefully Justify Retention of Development Impact Fees

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ATTORNEYS

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A city may lose all unexpended impact fees if it fails to fully comply with the reporting requirements of the Mitigation Fee Act. In an opinion released Friday, the California Court of Appeal ordered the City of San Clemente to refund approximately $10.5 million in unexpended impact fees due to the City's failure to adequately justify its continued retention of the fees. The City established a "Beach Parking Impact Fee" on new residential developments outside the City's coastal zone in 1989 to defray the costs of acquiring and constructing new beach parking facilities. The City is required under the Mitigation Fee Act to make findings every fifth year that identify how the unexpended impact fees will be used and demonstrate a reasonable relationship between the fee and the purpose for which it will be used.

The City argued that it fully complied with the Mitigation Fee Act by issuing a report that summarized the City's general efforts to increase beach parking without identifying any specific public improvement projects. The Court rejected that argument.

Instead, the Court held that the City's findings were "mere conclusions" that failed to meet the requirements of the Mitigation Fee Act. The Court noted that the City failed to identify any specific public improvement projects it intended to finance with the unexpended impact fees, despite establishing the "Beach Parking Impact Fee" 20 years earlier. In addition, the Court found that the findings did not sufficiently reexamine the need for the unexpended impact fees to finance beach parking improvements. Because the findings were determined to be inadequate, the City must refund all unexpended impact fees.

Walker v. City of San Clemente, decided August 28, 2015.

If you have any questions or would like more information regarding how this ruling may impact your city's programs, please contact Peter Thorson or any of the members of the Firm's Public Law Department.