

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BBB*
DATE: APRIL 1, 2009

AGENDA ITEM
E-6
APRIL 8, 2009

INTRODUCE COMMERCIAL FEE PHASING ORDINANCE

ITEM

Introduce ordinance adding fee payment phasing provisions to Intent-To-Serve process and set second reading for April 22, 2009 [SET SECOND READING].

BACKGROUND

At the January 14, 2009 Board meeting, the Board directed staff to present possible code changes for the Board's consideration in response to the request from George Newman, representative for Nipomo Business Park, LP, developer of Tract 2652, for phasing payment of fees for the project. At the February 25, 2009 Board meeting, the Board reviewed staff's concept of allowing phasing of supplemental water capacity charges for multi-parcel commercial projects and directed staff to present possible code changes for the Board's consideration. The proposed code changes were presented to the Board at the March 25, 2009 Board meeting.

Attached is a draft ordinance providing for the amendment of Section 3.04.051 and the addition of Section 3.04.052 including the revisions ordered by the Board at the March 25, 2009 Board meeting.

FISCAL IMPACT

Introduction of the ordinance involves the use of pre-funded staff time. Adoption of the Ordinance at a subsequent hearing would obligate the District to publish the text of the ordinance in a newspaper of general circulation and to implement the prescribed review functions.

RECOMMENDATION

Staff believes that the ordinance provides temporary relief for new commercial development by deferring payment of a portion of the Fees for Connection related to supplemental water and supports adoption. Staff recommends that the Board receive public feedback on the draft ordinance, order any appropriate edits, adopt a motion to read by title (or designate a director to read the entire text), and then adopt a motion to set the second reading for April 22, 2009.

ATTACHMENTS

- Draft Ordinance (Section 3.04.051 Amendment and New Section 3.04.052)

**NIPOMO COMMUNITY SERVICES DISTRICT
ORDINANCE NO. 2009-XXX**

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING TITLE 3 OF THE NIPOMO COMMUNITY SERVICES DISTRICT CODE TO
ESTABLISH NEW PROCEDURES FOR PAYMENT OF
DISTRICT FEES FOR CONNECTION FOR
COMMERCIAL PROJECTS DEVELOPED ON TWO OR MORE
COMMERCIALLY ZONED PARCELS**

WHEREAS, it is a major responsibility of the Nipomo Community Services District ("District")
to:

- A. Operate and maintain its water production and distribution facilities so as to provide adequate water service and fire protection to District water customers; and
- B. Maintain adequate levels of revenue, equitably collected from District water customers and future customers, to meet the District's financial commitments including acquiring supplemental water to augment the District's current water production facilities to prevent impairment to the Groundwater Basin.

WHEREAS, pursuant to District Code Section 3.04.051, the District currently requires the initial deposit for "Fees for Connections" to be paid prior to issuance of District Will Serve Letter; and

WHEREAS, San Luis Obispo County ("County") requires a District Will Serve Letter prior to recording final maps; and

WHEREAS, due to the current credit crisis, the above policies severely impact large commercial projects developed on two or more parcels where one or more of the parcels requires a 1.5 inch or larger water meter; and

WHEREAS, the District recognizes that large commercial projects provide jobs and income to District residents who, in turn, are responsible for payment of District's rates and charges; and

WHEREAS, the District held public meetings and received public comment on the rules and regulations adopted herein on April 8, 2009, and _____; and

WHEREAS, based upon the Staff Report, this Ordinance, Staff Presentation and public testimony received, the Board of Directors finds:

- A. The public meetings adopting this Ordinance have been properly noticed pursuant to Government Code Section 54954.2 (The Brown Act);
- B. The purpose of this Ordinance is to provide temporary relief for large commercial projects by deferring payment of a portion of the Fees for Connection related to supplemental water capacity charges as provided in Section 3.04.052, below.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Directors of the Nipomo Community Services District as follows:

Section 1. Authority.

This Ordinance is enacted pursuant to Government Code Sections 61600(a), 61060 (a) and (b) and 6115(a)(2).

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PROJECTS DEVELOPED ON TWO OR MORE COMMERCIAL ZONED PARCELS**

Section 2. Section 3.04.051 of the District Code is hereby amended as follows:

Section 3.04.051 Payment of Connection Fees and Capacity Charges.

Except as provided in Section 3.04.052, below, the applicant shall pay the water capacity charges (including supplemental water capacity charges), sewer capacity charges, reimbursement charges (if applicable), meter fee and account set-up fee, collectively "Fees for Connection" as follows:

- A. The Applicant shall make a non-refundable deposit ("Deposit") at the time the District issues a Will-Serve Letter in an amount equal to the then calculated Fees for Connection.
- B. The Fees for Connection shall be calculated and owing as of the date the District sets the water meter(s) to serve the affected property from which the amount of the Deposit shall be deducted.
- C. The District will set water meter(s) upon proof of a building permit from the County of San Luis Obispo and that the District has accepted improvements to be dedicated to the District, if applicable.

Section 3. Section 3.04.052 is added to the District Code as follows:

Section 3.04.052 Payment of Connection Fees and Capacity Charges for Commercial Development

For commercial projects developed on commercially-zoned properties within the District, the applicant shall pay the water capacity charges (including supplemental water capacity charges), sewer capacity charges, reimbursement charges (if applicable), meter fee and account set-up fee (collectively "Fees for Connection") as follows:

- A. For commercial projects that do not meet the requirements of subparagraph B, below, the payment provisions of Section 3.04.051 shall apply.
- B. For commercial projects under a single application for a final map, developed on two or more parcels, where one or more of the parcels requires a 1.5 inch or larger water meter, the following payment provisions shall apply.
 - (1) The applicant shall make a non-refundable deposit ("Deposit") at the time the District issues a Will-Serve Letter in an amount equal to the total project Fees for Connection minus 90% (ninety percent) of the water capacity charges attributed to supplemental water.
 - (2) The remaining 90% (ninety percent) of the project's supplemental water Deposit shall be due and payable on the first of the following to occur:
 - a. Sale of any one of the parcels;

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- b. Applicant's request to set the first water meter at any one parcel; or
 - c. 18 (eighteen) months from the date the Will-Serve Letter is issued.
- (3) Prior to issuing the Will Serve Letter, Applicant shall provide District, to the satisfaction of District Legal Counsel, the following:
- a. A recordable document referencing Applicant's obligation for payment of Fees for Connection as outlined in this subparagraph B; and
 - b. A subordination agreement.
- C. The Fees for Connection shall be calculated and owing as of the date the District sets the first water meter(s) to serve the project from which the amount of the Deposit shall be deducted.
- D. The District will set water meter(s) upon proof of a building permit from the County of San Luis Obispo and that the District has accepted improvements to be dedicated to the District, if applicable.

Section 4. Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference.

Section 5. Effect of Repeal on Past Actions and Obligations.

This Ordinance does not affect prosecutions for Ordinance violations committed prior to the effective date of this Ordinance, does not waive any fee or penalty due and unpaid on the effective date of this Ordinance, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any Ordinance.

Section 6. CEQA Findings

The Board of Directors of the District finds that the revisions of the policies and procedures adopted by this Ordinance are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15378 (b) (2) because such amendments constitute general policy and procedure making. The Board of Directors further finds that the adoption of the rules and regulations established by this Ordinance is not a project as defined in CEQA Guideline Section 15378, because it can be seen with certainty that the revisions will not result in either a direct physical change in the environment, nor is there a reasonable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

Section 7. Severance Clause.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared

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unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 8. Effect of Headings in Ordinance.

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

Section 9. Effective Date.

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of fifteen (15) days after passage it shall be posted in three (3) public places with the names of the members voting for and against the Ordinance and shall remain posted thereafter for at least one (1) week. The Ordinance shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in the _____.

Introduced at its regular meeting of the Board of Directors held on April 8, 2009, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the _____ day of _____, 2009, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICTS:

James Harrison, President
Nipomo Community Services District
Board of Directors

ATTEST:

APPROVED AS TO FORM:

DONNA K. JOHNSON
Secretary to the Board

JON S. SEITZ
District Legal Counsel

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