

Attachment B

City of Newport Beach Development Agreements Report Fiscal Year 2016-2017

City of Newport Beach
Development Agreements Report
Fiscal Year 2016-2017

Background

A Development Agreement (“DA”) is a contract between a local jurisdiction and a person who has ownership or control of property within the jurisdiction. The purpose of the agreement is to specify the standards and conditions that will govern development of the property. The development agreement provides assurance to the developer that he/she may proceed to develop the project subject to the rules and regulations in effect at the time of approval - the development will not be subject to subsequent changes in regulations.

DA should also benefit the local jurisdiction. The city or county may include conditions (mitigation measures) that must be met to assure that a project at a specific location does not have unacceptable impacts on neighboring properties or community infrastructure. The agreement may clarify how the project will be phased, the required timing of public improvements, the developer's contribution toward funding system-wide community improvements, and other conditions. The agreement can also facilitate enforcement of requirements, since it is a contract that details the obligations of the developer and local jurisdiction.

In March 2013, the City Council adopted Council Policy I-13 establishing a Public Art and Cultural Facilities Fund, and a funding source for the acquisition, installation, management and maintenance of Public Art without adopting or imposing new fees or charges. With the adoption of the policy, the council authorized the deposit of two percent of the unallocated public benefit fees received by the City from development agreements into the Public Arts and Cultural Facilities Fund. These funds were originally established to provide for the acquisition and maintenance of permanent art structures and installations as identified in the Newport Beach Master Arts and Culture Plan. On August 8, 2017, the City Council approved Resolution No. 2017-55 which deleted, among others, Policy I-13. This report covers the period of financial activity (July 1, 2016 and June 30, 2017) prior to when Policy I-13 was deleted. While the report makes several references to the transfer of developer funds into the Public Arts and Cultural Facilities Fund, no such transfers will appear in subsequent reports starting in FY 2017-18. On September 12, 2017, the City Council authorized the transfer of the total remaining balance of funds (\$804,393) in the Public Arts and Cultural Fund to the Facilities Financing Plan Fund. These funds will be used in part for the purchase of land to build the new Lido Fire Station 2. The Public Arts and Cultural Fund is currently no longer active.

Annual Reporting

For DAs entered into or after January 1, 2004, *Government Code §65865 (e)* requires that the City shall comply with the reporting requirements pursuant to *Government Code §66000*, with respect to any fee the City receives or cost it recovers. *Government Code §66006* requires the City to submit annual and five-year notices detailing the status of collected public benefit fees, and be placed on the agenda for review at a public meeting not less than fifteen (15) days after the report is made available to the public. The meeting before the City Council must be held within one hundred eighty (180) days of the end of the fiscal year. The report must include the beginning and ending balances, the amount of fees collected and interest earned, expenditures by type, a description of interfund transfers or loans, and the amount of any refunds made. Excluded from this report are types of developer fees that are not subject to the reporting requirements under *Government Code §65865(e)*. For example, these include fees collected pursuant to the City's zoning powers, such as in-lieu housing fees, and park-in-lieu fees.

Annual Report

To comply with *Government Code §66006*, the following information regarding DA Fee is presented:

- 1) A brief description of the type of public benefit fee in the account or fund:
 - a) New Home Company Development Agreement – On January 10, 2006, the City Council adopted Resolution No. 2006-2 permitting the development of 79 condominiums (Santa Barbara Condominium project) on a 4.25-acre site located at 900 Newport Center Drive. Subsequently the City Council adopted a new Housing Element and approved the Affordable Housing Implementation Plan on August 14, 2007, per Resolution No. 2007-058. The resolution also approved the Memorandum of Understanding (“MOU”) between the City and the Developer establishing an understanding that a development agreement would be prepared outlining the provisions to be included in the development agreement. On February 28, 2012, the City Council adopted Resolution No. 2012-19 approving a Memorandum of Agreement (“MOA”) between the City Council and New Home Company, waiving the requirement of a development agreement for the Santa Barbara Condominium project. The MOA specifies the term, permitted uses, public benefits fee, in addition to the housing and park fees. Public benefit fees were required to be paid by New Home Company as part of the MOA, and are accounted for in the Facilities Financing Replacement Fund.
 - b) Newport Beach Country Club Development Agreement – On January 24, 2012, the City Council adopted Ordinance No. 2012-5 approving and adopting a Development Agreement between the City and Newport Beach Country Club permitting the reconstruction of the golf clubhouse to a maximum of 56,000 square feet. The DA specifies the term, permitted uses, public benefits and

dedication of street right-of-way and open space. Public benefit fees were required to be paid by Newport Beach Country Club as part of the DA approval, and are accounted for in the Facilities Financing Replacement Fund.

- c) Uptown Newport Development Agreement – On March 12, 2013 the City Council adopted Ordinance No. 2013-6 approving the Development Agreement for the development of a 25-acre, mixed-use residential project consisting of 1,244 residential dwelling units, two one-acre public parks, and 11,500 square feet of retail use located at 4311-4321 Jamboree Road. On April 28, 2015 the City Council approved the First Amendment to the Development Agreement that delayed the timing of payment of public benefit fees and park in-lieu fees. The DA specifies the term, permitted uses, public benefits fees, park in-lieu fees, dedication of park land and open space. Public benefit fees were required to be paid by Uptown Newport, LP as part of the DA approval, and are accounted for in the Facilities Financing Replacement Fund.

2) The amount of the DA fees:

- a) New Home Company Development Agreement – \$63,291 per residential unit for 79 units concurrent with certificate of occupancy. Total of \$3,354,434 was received in September 2015. Two percent of this, \$67,089, was transferred to the Public Arts and Cultural Facilities Fund. The balance at June 30, 2016 was \$2,761,324.
- b) Newport Beach Country Club Development Agreement – \$10 per-square-foot of construction for the proposed gold clubhouse at the issuance of the first building permit. Total of \$562,196 was received in December 2014. Two percent of this, \$11,244, was transferred to the Public Arts and Cultural Facilities Fund. They added a 903-square foot addition at \$10.25 per-square-foot for an additional amount of \$9,256, which was received in August 2016. Two percent of this, \$185, was transferred to the Public Arts and Cultural Facilities Fund.
- c) Uptown Newport Development Agreement – \$34,826 per residential unit for 462 units at the issuance of building permits for construction. Total of \$16,089,612 was received in May 2017. Two percent of this, \$321,792, was transferred to the Public Arts and Cultural Facilities Fund.

3) The Beginning and Ending balance of individual DAs:

See attached Financial Report.

4) The amount of DA fees collected and interest earned:

See attached Financial Report.

- 5) An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with the fees:

See attached Financial Report.

- 6) An identification of an approximate date by which the construction of the public improvements will commence if the City determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in the City's master plans, and the public improvement remains incomplete:

New Home and Newport Beach Country Club development agreement funds have all been expended. Uptown Newport development agreement funds are expected to be expended by 2019. The portion of funds transferred to the Public Art and Cultural Facilities Funds will be expended in 2018.

- 7) 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:

- a) New Home Company Development Agreement – Two percent of the public benefit fees, \$67,089, was transferred to the Public Arts and Cultural Facilities fund in FY 2015-16. There were no interfund loans made during this fiscal year.
- b) Newport Beach Country Club Development Agreement – Two percent of the public benefit fees, \$11,244 and \$185, was transferred to the Public Arts and Cultural Facilities fund in FY 2015-16 and 2016-17 respectively. There were no interfund loans made during the fiscal year.
- c) Uptown Newport Development Agreement – Two percent of the public benefit fees, \$321,792, was transferred to the Public Arts and Cultural Facilities fund. There were no interfund loans made during the fiscal year.

The amount of refunds made pursuant to subdivision (f) of *Government Code §66001* any allocation pursuant to subdivision (f) of *Government Code §66001*.

No refunds were made during the fiscal year.

Financial Reports

New Home Company Development Agreement FY 2016-17

		Total Project Costs (FY Only)	% Developer Agreement Funded
Revenues:			
Developer Fees	\$ -		
Interest Income	-		
Total Revenues	<u>-</u>		
Expenditures:			
	\$ -		
Transfers In/(Out):			
Transfer Out - Marina Park fund	\$ (2,761,324) ¹	(43,062) ¹	6412.4%
Total Transfers	<u>(2,761,324)</u>	<u>(43,062)</u>	
Net Change in Fund Balance	(2,761,324)		
Fund Balance, beginning	\$ 2,761,324		
Fund Balance, ending	<u>\$ -</u>		

¹ Costs for capital projects that are funded by the Facilities Financing Plan Fund, such as Marina Park, are reimbursed by the Facilities Financing Plan Fund after all costs have been incurred. The transfer out recognizes costs incurred in prior fiscal years.

Newport Beach Country Club Development Agreement FY 2016-17

		Total Project Costs (FY Only)	% Developer Agreement Funded
Revenues:			
Developer Fees	\$ 9,256		
Interest Income	107		
Total Revenues	<u>9,363</u>		
Expenditures:			
	\$ -		
Transfers In/(Out):			
Transfer Out - West Newport Community Center	\$ (9,178)	(130,028)	7.1%
Transfer Out - Public Arts and Cultural Facilities Fund	(185)		
Total Transfers	<u>(9,363)</u>	<u>(130,028)</u>	
Net Change in Fund Balance	-		
Fund Balance, beginning	\$ -		
Fund Balance, ending	<u>\$ -</u>		

**Uptown Newport Development Agreement
FY 2016-17**

		<u>Total Project Costs (FY Only)</u>	<u>% Developer Agreement Funded</u>
Revenues:			
Developer Fees	\$ 16,089,612		
Interest Income	<u>28,603</u>		
Total Revenues	<u>16,118,215</u>		
Expenditures:			
	\$ -		
Transfers In/(Out):			
Transfer Out - Marina Park fund	\$ (5,828,681) ¹	(43,062) ¹	13535.6%
Transfer Out - West Newport Community Center	(120,849)	(130,028)	92.9%
Transfer Out - Public Arts and Cultural Facilities Fund	<u>(321,792)</u>		
Total Transfers	<u>(6,271,322)</u>	<u>(173,090)</u>	
Net Change in Fund Balance	9,846,892		
Fund Balance, beginning	\$ -		
Fund Balance, ending	<u>\$ 9,846,892</u>		

¹ Costs for capital projects that are funded by the Facilities Financing Plan Fund, such as Marina Park, are reimbursed by the Facilities Financing Plan Fund after all costs have been incurred. The transfer out recognizes costs incurred in prior fiscal years.

**Public Arts And Cultural Facilities Revenues
FY 2016-17**

Revenues:	
Developer Fees	\$ -
Interest Income	<u>1,471</u>
Total Revenues	<u>1,471</u>
Expenditures:	
	\$ -
Transfers In/(Out):	
Transfer In - Uptown Newport DA	\$ 321,792
Transfer In - Newport Beach Country Club DA	<u>185</u>
Total Transfers	<u>321,977</u>
Net Change in Fund Balance	323,448
Fund Balance, beginning	\$ 481,130
Fund Balance, ending	<u>\$ 804,578</u>

¹ On September 12, 2017, the City Council authorized the transfer of the total remaining balance of funds in the Public Arts and Cultural Fund to the Fire Station Fund per the Facilities Financing Plan. These funds will be used in part for the purchase of land to build the new Lido Fire Station 2. The Public Arts and Cultural Fund is currently no longer active.