



## **CITY OF SALINAS COUNCIL STAFF REPORT**

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**DATE:** JULY 11, 2017

**DEPARTMENT:** COMMUNITY DEVELOPMENT

**FROM:** MEGAN HUNTER, DIRECTOR

**TITLE:** MODIFICATION TO THE ECONOMIC DEVELOPMENT INCENTIVE AND INVESTMENT POLICY FOR COMMUNITY BENEFIT PROJECTS AND DEVELOPMENT FEE DEFERRAL AGREEMENT FOR THE FOOD BANK OF MONTEREY COUNTY

### RECOMMENDED MOTION:

A motion to approve minor amendments to the Economic Development Incentive and Investment Policy and modification of provisions related to Community Benefit Projects.

A motion to authorize the City Manager to enter into a five-year Development Fee Deferral Agreement not to exceed \$440,000 with the Food Bank of Monterey County.

### RECOMMENDATION:

It is recommended that City Council approve the following two resolutions:

- 1) A resolution modifying the City Council Economic Development Incentive and Investment Policy for Community Benefit Projects; and
- 2) A resolution authorizing the City Manager to enter into a five-year Development Fee Deferral Agreement not to exceed \$440,000 with the Food Bank of Monterey County.

### EXECUTIVE SUMMARY:

On April 3, 2017, Melissa Kendrick, Executive Director of the Food Bank of Monterey County, a 501(c)(3) nonprofit organization, approached the Finance Committee requesting that the City waive the permitting and development impact fees for a \$6 million dollar warehouse/office facility at 353 West Rossi that the non-profit planned to construct. The fees for this new building were estimated to be over \$500,000. The Finance Committee directed staff to explore options to assist the Food Bank as allowed under State law and current City policy.

Through this process, staff learned that in 2013, City Council modified the Economic Development Incentive and Investment Policy for Community Benefit Projects in order to assist the development of Rabobank Stadium. After evaluating this policy, it was determined that it could be used to assist other Community Benefit Projects with substantial citywide impact including the construction of new facilities at 353 W. Rossi for the Food Bank of Monterey County. Therefore, it is recommended that the policy be broadened to allow City Council to provide incentives to other

significant Community Benefit Projects. As amended, the policy would allow City Council to authorize the City Manager to enter into a five-year fee deferral agreement not to exceed \$440,000 with the Food Bank of Monterey County and ensure that this vital project could go forward.

#### BACKGROUND:

Ms. Kendrick reached out to the Community Development Department (CDD) regarding the permitting and development impact fees in March 2017. Prior to that Ms. Kendrick contacted the CDD Director in November 2016 regarding the Site Plan Review process and asked for assistance with planning staff. During communication with Ms. Kendrick, the Director stated that she was unable to waive the fees and that she was only aware of City Council deferring payment of impact fees. The Food Bank reached out to various members of City Council and senior management and was invited to attend the April 3<sup>rd</sup> Finance Committee meeting.

During the Finance Committee meeting, staff and City Council Members acknowledged the significant contributions of the Food Bank, but also stressed that any type of fee waiver was unlikely given State law and the current City budget. The Finance Committee directed staff to consider possible alternatives in order to assist the Food Bank with the associated fees for the new building. Ms. Kendrick also requested that the City initiate plan review in advance of payment for permitting with the understanding that staff would keep records of the time associated with the plan review.

Since April, staff considered multiple options including determining whether the City could allocate CDBG funding. Unfortunately, due to the nature of CDBG funding, the project would have been significantly delayed in order to process a NEPA clearance. Moreover, it would have required the use of prevailing wage, which could have increased overall construction costs. Ultimately, it was decided that CDBG funding for public facilities was not an option. In addition, staff explored the possibility of a general fund contribution during the budget process. Unfortunately, due to budget constraints and concerns about future PERS obligations, it was determined that funding for this was unavailable. As further outlined below such a contribution could also prompt other challenges related to State prevailing wage and gift of public funds. Thus, a fee deferral became the best option under the City's existing tools.

#### DISCUSSION:

On January 22, 2013, the City Council modified the Economic Development Incentive and Investment Policy (EDIIP) to create a mechanism for City Council to "provide relief from development impact and City processing fees for Community Benefit Projects". This modification was chiefly made to assist the Rabobank Municipal Stadium Project with approximately \$135,000 of related fees.

The modification to the EDIIP ultimately added Community Benefit Projects with the following definition "non-residential in nature and which is proposed to be developed on land owned or controlled by the City, for example, a Municipal Stadium or Soccer Complex". The reason outlined for such a change to the policy was these projects "assist with quality of life economic goals". The construction of a brand new \$6 million, 62,530 square foot building with warehouse

and office space for the Food Bank of Monterey County, a 501(c)(3) nonprofit organization, will equally assist with quality of life economic goals by ensuring our residents have critical access to food. The Food Bank serves over 100,000 residents, approximately half of those are from the City of Salinas. The Food Bank has established 14 Emergency Food Assistance Program Sites and 3 Free Farmers Markets in the City, serving in excess of 200 families. At the Kids NOW (Nutrition On the Weekend) sites in the Salinas Elementary School district, the Food Bank distributes 1000 weekly bags. The Food Bank also provides food assistance to over 50 agencies in Salinas including organizations that the City has funded such as the Franciscan Workers.

Moreover, the construction of this facility will allow a non-profit organization to expand its operations in the City, meeting the original goal of local business expansion including all of the positive ancillary impacts such as new opportunities for employment and business to business support. The Food Bank of Monterey County currently employs twenty-nine staff and expects to hire additional workers with the development of the new facility and as services grow. If this is the intent of City Council, the EDIIP should be broadened to allow for Community Benefit Projects that can demonstrate a substantial citywide benefit.

To ensure that the policy is narrowly applied to those projects that will truly have a significant impact, it is recommended that a Community Benefit Project is further defined as projects that either qualify as: 1) a City facility, or 2) a public facility under HUD that involves at least \$5 million in new construction or major rehabilitation, or 3) affordable housing projects with at least 20 low-income units and receive City assistance through HUD grants, other discretionary funding, or land disposition. In addition to this change in definition, before an incentive is provided, a Community Benefit Project must also demonstrate that the value of the services provided are greater than the cost of the incentive. Other minor amendments are proposed consistent with current City protocol.

Should City Council adopt the recommended policy modification, then the Food Bank of Monterey County facility would be an eligible Community Benefit Project. As outlined above, the facility is valued at over \$6 million. The Food Bank would qualify as a public facility under HUD's definition. In fact, the only reason we did not offer assistance through the CDBG program is the timing of the project. While we were unable to fund the facility itself through CDBG, the City supports the Food Bank operations through the CDBG Program and has done so at least since 2010. In fact, next year's action plan commits up to \$20,000 toward Food Bank operations. Thus, the Food Bank receives City financial assistance. In terms of the service benefit, the Food Bank provides almost 3 million pounds of food per year to Salinas, valued at over \$600,000, which clearly outweighs the cost of an approximately \$440,000 fee deferral.

Given the importance of this project and the significant financial burden of approximately \$500,000 in development fees (development impact and permitting), staff recommends City Council authorize the City Manager to enter into a five year fee deferral agreement with the Food Bank of Monterey County. As stated above, the Food Bank of Monterey County is a 501(c)(3), non-profit and unfortunately does not produce traditional tax revenue as other business. However, the deferral would provide additional time for the organization to fund raise to pay the debt. The organization has been in existence over twenty-five years with a strong record of accomplishment of raising funds to grow the organization.

This action would also allow the City Manager or designee to establish the appropriate accounting system to track and monitor payment. The recommended terms of the fee deferral are as follows:

- All regional fees (i.e. TAMC) collected by the City shall be paid by the Food Bank at the time of permitting.
- Actual permitting costs (plan check & inspection) shall be paid by the Food Bank prior to the issuance of the Final Occupancy Permit.
- The remaining City development impact fees (estimated to be \$341,000) shall be paid by the Food Bank in equally divided annual increments over the next five years beginning a year after the Final Occupancy Permit is issued.
- A simple 3.75% interest shall be instituted on the principal after the first annual payment is made. *This is consistent with similar fee deferrals for housing projects.*
- The term of the agreement shall be five years beginning with the issuance of the final occupancy permit.

Although the Food Bank requested a waiver, there are certain provisions in State law that could trigger concerns related to the gift of public funds or require that the project be subject to prevailing wage. Moreover, there could be repercussions for future collection of development impact fees, which have been carefully calculated so each project pays its fair share of impact. The City cannot absolve one project from paying towards these needed capital projects without an alternative source of funding. Moreover, the recently established enterprise fund for building services requires the City to collect the actual cost of permitting and again cannot burden another project with these costs. Unlike fee waivers, fee deferrals to a date later than otherwise contemplated which are subject to an agreement requiring payment by the developer at a date certain with interest, do not generally generate the same issues and therefore, are much more commonplace among cities. For these reasons, this is the recommended approach for the Food Bank.

It should be noted that recently TAMC re-evaluated their traffic impact calculations and significantly reduced the fee. Consistent with City policy, staff has encouraged the applicant to provide technical third party documentation from a traffic consultant on the trips generated by the use. Upon receipt of this documentation, the City can re-evaluate our calculations and potentially re-adjust our traffic impact fees downward. As a result, this recommendation is for a deferral amount larger amount than ultimately may be imposed.

#### CEQA CONSIDERATION:

The modification of the EDIIP and subsequent Development Fee Deferral Agreement is **Not a Project**. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) (CEQA Guidelines Section 15378). In addition, CEQA Guidelines Section 15061 includes the general rule that CEQA applies only to activities which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Because the proposed action and this matter have no potential to cause any effect on the environment, or because it falls within a category of activities excluded as projects pursuant to CEQA Guidelines section 15378, this matter is not a project. Because the matter does not cause a direct or foreseeable indirect

physical change on or in the environment, this matter is not a project. Any subsequent discretionary projects resulting from this action will be assessed for CEQA applicability.

The actual construction of the Food Bank facility was evaluated under the California Environmental Quality Act (CEQA). When staff conducted the analysis of the required entitlements for construction of the Food Bank facility, it was determined that the project subject to an administrative Site Plan Review application process. This project is exempt per CEQA Section 15268 (Ministerial Projects).

#### STRATEGIC PLAN INITIATIVE:

As stated in the Food Bank's request "when such a significant percentage of a community is inadequately nourished, devastating and inevitable health problems will result in a considerable and lasting impact on the city as a whole: the economy, the health care system, the schools and workplaces, and the overall quality of life. Moreover, the adverse effects of hunger are not confined solely to the individual or family directly suffering from it, but by all who interact with them: their employers, their teachers and classmates, and their friends and neighbors. Every person in The City of Salinas, whether they personally suffer from food insecurity or not, is impacted by the issue of hunger."

Consistent with the City Council Goals of Economic Prosperity and Diversity and Quality of Life, it is recommended that City Council modify its Economic Development Incentive and Investment Policy and consider the new Food Bank facility a Community Benefit Project and authorize the fee deferral agreement.

#### FISCAL AND SUSTAINABILITY IMPACT:

The modification to the policy would have a minimal fiscal and sustainability impact potentially increasing the number of eligible projects for incentives. However, given the new criteria for Community Benefit Projects, the benefits would have to demonstrate that the value outweighs the cost.

The fee deferral agreement with the Food Bank would delay collection of impact fees that would have a minor fiscal and sustainability impact by potentially slowing the timing of certain capital projects. However, given the number of capital projects the City is already committed to especially due to Measure X funding, it is unlikely that the City would have the capacity to do more capital projects than is already planned out for the next several years.

#### ATTACHMENTS:

Resolution to Modify the Economic Development Incentive and Investment Policy

Draft of Revised Economic Development Incentive and Investment Policy

Resolution 20329 – January 22, 2013

Resolution to Enter into a Fee Deferral Agreement with the Food Bank of Monterey County