CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: May 15, 2017

ITEM: Motion - Approval of Exaction Policy

FINANCIAL IMPACT: None

SYNOPSIS: In conjunction with the subdivision and zoning codes of the City, property development that impacts City infrastructure requires the development to provide an exaction to address the impact of the development on the infrastructure. The process to impose the exaction must meet constitutional and statutory guidelines, generally defined as finding an "essential nexus" between the proposed development and its impact on the infrastructure, and once established, to ensure that the requested exaction is "roughly proportional" to the impact on the infrastructure created by the development.

The attached policy sets forth the analysis to be undertaken when an exaction is being considered in various development situations and establishes the process to be followed to impose the exaction. Although exaction analysis is made on a case by case basis, the policy provides general guidelines that ensure legal compliance and consistency in the process.

RECOMMENDATION:

Approve a motion adopting the attached Exaction Policy.

Lead Staff Member: Richard J. Scieszinski, City Attorney RJS

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development and Planning		
Date Reviewed	March 20 and May 1, 2017		
Recommendation	Yes		

EXACTIONS

The City of West Des Moines has the authority to regulate land use through its police power and subdivision ordinance in order to provide for the health, safety and welfare of its citizens. The City may impose reasonable regulations for the use of property or as a condition to approve the subdivision of land. This includes the authority to require the dedication of right-of-way, installation of public infrastructure such as streets, sidewalks and sewers as part of the development process.

The takings clause of the Fifth Amendment to the U.S. Constitution, however, permits the taking of private property for public use only upon payment of just compensation, thereby preventing a municipality from requiring the construction of infrastructure, the dedication of property or the payment of a fee unless there is a nexus between the impact of the land being developed to the required infrastructure, dedication of land or payment of the fee. Without this nexus, land development regulations may be deemed unconstitutional takings of property without just compensation.

To comply with the Constitution, the "essential nexus" test requires that the exaction "substantially advance" the purpose for which the exaction is imposed. Upon a showing by the City that an essential nexus exists, the City must provide evidence that "the degree of the exactions demanded bear the required relationship to the projected impact of the proposed development." This second requirement is the "rough proportionality" test, which answers the question "What is the degree of connection between the exactions imposed by the City and the projected impacts of the proposed development?" The City must make a determination that the required dedication is related (roughly proportional) both in nature and extent to the impact of the proposed development. In order to make this determination, the City must quantify its findings as part of its exaction analysis.

A cash payment to cover the cost of a public improvement (exaction) necessitated by a new development, known as an impact fee, is not legal in Iowa. Therefore, the exaction must be the dedication and/or construction by the developer of the exaction itself.

When imposing an exaction upon a developer or land owner, the burden is on the City, not the developer or land owner, to show that the exaction meets these legal requirements.

EXACTIONS UNDER CITY SUBDIVISION ORDINANCE.

An essential nexus is clearly evident in standard subdivision development to require a developer to provide, at no cost to the City, public improvements such as street right-of-way, paved streets, sewer and water lines, sidewalks, easements for utilities and other on-site infrastructure constructed in accordance with applicable subdivision ordinance standards. Although non-residents will utilize the streets and sidewalks along with residents living within the subdivision, requiring the installation of these improvements is necessitated by and directly attributable to the new development. The exaction, therefore, substantially advances the purpose for which the exaction is imposed, which is to address the impact of the development on existing City infrastructure. In such a case, the only determination to be made is the size and/or specifications of the required exaction.

Assuming that the standards established in the subdivision ordinance regarding the type and size of public improvements required by the ordinance are reasonably related to address the impact created by the development, an in-depth analysis of "rough proportionality" should not be required.[1]

EXACTIONS FOR OFF-SITE IMPROVEMENTS.

Off-site exactions refer to contributions toward public improvements that are outside the boundary of subdivisions, such as access roads or off-site drainage easements, or public improvements that will serve larger segments of the city in addition to the improvements required for the specific subdivision.

As with the development of a subdivision, the ability of the City to require an off-site exaction of land dedication or the construction of a public improvement is subject to the "nexus" and "rough proportionality" analysis. However, unlike the development of a subdivision, obtaining an exaction for an off-site public improvement often proves more difficult.

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[1] The West Des Moines Comprehensive Plan and the West Des Moines Subdivision ordinance impose as an exaction the construction of the minimum infrastructure necessary to address the impacts of the proposed subdivision. If the extent of a required exaction is challenged, the burden is on the City to provide quantitative evidence of the nexus and proportionality of the exaction to the proposed development.

If, for example, a traffic study indicates that a proposed development will produce additional off-site traffic on an existing adjacent roadway, a nexus has been established. If, based upon the nexus, the City requires the development to install an additional lane on the adjacent roadway, the City will be required to prove that installation of the additional lane is a proportionate response to address the traffic produced by the development. That is, the exaction is proportionate to address the projected impact of the proposed development. Although the traffic study may provide evidence of the nexus, the traffic study may not provide sufficient evidence that installation of the additional lane is justified (not roughly proportional). In such situations, the development should be responsible to compensate for the impact it has created on the roadway, even though the impact does not justify construction of a full lane. However, impact fees are not allowed in Iowa, which would allow cash payment to the City based upon the percentage increase in traffic generated by the development that could then be applied toward the overcall cost of construction of the additional lane. Therefore, because the construction of another lane is not a proportional response to address the impact of the additional traffic generated by the development, and because requiring something less (partial payment to off-set the cost of construction of another lane) cannot be legally imposed, the City does not have the ability to require the exaction as a condition of approval.

EXACTIONS TO MEET CODE COMPLIANCE.

The policy of the City of West Des Moines is to require an existing development to conform to current City codes and regulations. The opportunity to address existing code deficiencies arises when a development seeks an entitlement from the City, subjecting the development to the City's police power.

The West Des Moines Comprehensive Plan identifies the proposed street system for the City and establishes street classifications based upon the physical size and vehicle capacity of the street. A component of the classification is the amount of right-of-way required for the street to function as classified. Due to a variety of circumstances, many existing streets in the City do not conform to the current specifications established in the Comprehensive Plan.

In an effort to address the deficiency and bring the street into compliance with Comprehensive Plan specifications, it is appropriate under the authority of the City subdivision ordinance and/or police power to analyze the impact of a proposed development on the existing street at the time the development seeks an entitlement. However, it is inappropriate to require the proposed development to

provide additional right-of-way or construct additional lanes simply because the street does not comply with current Comprehensive Plan specifications. In order to impose such an exaction, the City is required to establish a nexus by providing evidence of the impact of the development on the street, and to provide evidence that the proposed exaction requiring the dedication of additional right-of-way is roughly proportional to the impact of the development.

PROCEDURE TO IMPOSE AN EXACTION AS CONDITION OF APPROVAL.

In conjunction with an application for a proposed development, the City must analyze the impact of the development on the public infrastructure system. This is done through objective measurement such as a traffic study or sewer system impact and capacity analysis. If the analysis provides quantifiable evidence that the development affects City infrastructure, the City must conduct further analysis and provide evidence that the requested exaction is consistent in nature and extent to address the impact created by the development. The exaction must substantially advance the purpose for which the exaction is imposed, which is to address the effect of the development on existing City infrastructure.

Exaction analysis is done on a case-by-case basis. Although mathematical precision is not required, the burden is on the City to make an individualized determination through the use of quantifiable evidence that there is a nexus between the exaction and the legitimate City interest of addressing the problem created or exacerbated by the development. An exaction must address the infrastructure requirements created by the development, and will be determined to be reasonable if it equitably mitigates the impact created by the proposed development.

When an exaction is proposed, the department proposing the exaction must provide evidence that there is a quantifiable relationship between the development and the need for the exaction. If established, further quantifiable evidence must be provided to indicate that the proposed exaction is necessary to address the impact for which the exaction is imposed.

Failure of the analysis to show the existence of an essential nexus and/or to demonstrate that the exaction is roughly proportional to the impact it seeks to address, or failure of the department requesting the exaction to provide quantifiable evidence meeting these requirements will prevent the City from requiring that the exaction be made a condition of approval for a new or existing development.

DEED v. EASEMENT.

New development must be supported by adequate public facilities including adequate street access. The conveyance of an exaction related to a development in which a new roadway is required should be made in fee title, unless extenuating circumstances require otherwise.

The conveyance of an exaction related to a development in which additional right of way is required for an existing roadway can be made in fee title or easement. If by easement the conveyance should provide the same rights to the City had acquisition been made in fee.

PROCESS TO IMPOSE EXACTION.

Upon review of a preliminary development application by the development review team, the initial comment letter should include notification to the applicant that an exaction to provide adequate infrastructure to support the development may be required, pending analysis by the City.

Subsequent to submission of the preliminary application, an analysis should be undertaken by City staff to determine if there is an essential nexus created by the impact of the proposed development on city infrastructure. If a nexus is found to exist, the analysis should determine what infrastructure, if any, will be required of the development. If an exaction is required, submission of the analysis supporting the request should be made to the legal department for review and approval prior to submitting the request to the developer.

A brief summary of the analysis in support of the request should be included in the city council communication made in conjunction with approval of the development application by the City Council or Board of Adjustment.