



## Legislation Text

File #: 19-0645, Version: 2

### WITHDRAWN

~~Recommendation to receive supporting documentation into the record, conclude the public hearing, and deny an appeal/protest by Lennar Multifamily Communities (LMC), of the imposition of a Park and Recreation Facilities Fee, pursuant to Chapter 18.18, of the Long Beach Municipal Code, for the Oceanaire Project, at 150 West Ocean Boulevard (SPR1411-01, Mitigated Negative Declaration 03-15, dated June 1, 2015). (District 2)~~

On March 10, 2017, Lennar Multifamily Communities (LMC), submitted an application for a Parks and Recreation Facilities Impact Fee (Park Fee) credit to the City of Long Beach (City). LMC is the developer of the Oceanaire Project, a multifamily residential development at 150 West Ocean Boulevard. LMC requested a credit of \$498,573.20 for Park Fees. LMC believes it is due to offset costs incurred in association with park improvements made to Victory Park, which abuts the front of the LMC development project. When the project was initially approved in November 2000, LMC was required to dedicate land and provide improvements to Victory Park, in accordance with the requirements of the City's Local Coastal Program (LCP) and PD-6, the Downtown Shoreline Planned Development District zone (Attachments A and B). In response to a request from LMC dated March 10, 2017, in accordance with the procedures set forth in the Long Beach Municipal Code (LBMC), the Director of Parks, Recreation and Marine made a determination that LMC was not eligible for a Park Fee credit and denied the request (Attachment C). LMC filed an appeal of that denial on May 31, 2019 (Attachment D). On June 20, 2017, the Director of Parks, Recreation and Marine disseminated a memorandum to the City Council explaining Park Impact Fees (Attachment E).

On February 7, 1989, the City Council adopted Ordinance No. C-6567 (Attachment F), establishing a Park Fee, which was incorporated into the LBMC, as Chapter 18.18. LBMC Section 18.18.40 (Attachments G and H), requiring all residential developments in the City to pay Park Fees, on a per residential unit basis. The Park Fee varies by unit type and is adjusted annually based on changes to the Construction Cost Index (CCI). Per LBMC Section 18.18.020, the purpose of the Park Fee is to assure "that the park land and recreational facility standards established by the City are met, with respect to the additional needs created by new residential development." Furthermore, LBMC Sections 18.18.170 and 18.18.180, respectively, specify that Park Fees, do not affect requirements the City may otherwise impose pursuant to the City's Zoning Ordinance, subdivision regulations or other ordinances or regulations of the City, which remain "operative and in full force and effect," and that the fees are an "additional and supplemental requirement." As such, proposed residential developments subject to Park Fees, are required to comply with all zoning regulations, including those related to open space, landscaping, and related requirements, as well as the

individual project level conditions of approval.

LBMC Section 18.18.040 requires all new residential development to pay a Park Fee, prior to the issuance of Certificate of Occupancy, and further states “payment of the Park Fee due, shall be a condition of development approval of all residential developments and no tentative map or parcel map or site plan shall be approved nor shall a building permit be issued without compliance, with the provisions of this Chapter.”

In the case of the subject development, the site is located in the PD-6 Downtown Shoreline Planned Development District zone, which requires that all development fronting Ocean Boulevard dedicate portions of the lot for public park purposes, and that buildings be set back from Ocean Boulevard a distance of 80-feet to create a continuous, landscaped, linear park known as Victory Park. Other applicable requirements related to Victory Park vary by subarea. The PD-6 zone further requires compliance with the Victory Park Design Guidelines (Attachment I), which specify the types of improvements permissible in the dedicated park area, with the goal of creating a passive public park, free of private and commercial uses; new driveways, ramps, parking, bicycle paths, and similar facilities; free-standing walls; and, signs. The guidelines establish the principal uses of the park; how topographic features are to be addressed, as well as the kind of architectural elements (such as fountains and sculptures, walkways, seating, planting materials, and lighting), that are permitted in the park; and, likewise requires that all park adjacent development comply with the provisions of the Design Guidelines.

### Project Background and Detail

The subject project is a 216-unit, multifamily residential development (Attachments J - P), subject to the Park Fee, the requirements of the PD-6 zone, and the Victory Park Design Guidelines. LMC paid fees in the amount of \$796,560.48 on May 31, 2019, and is requesting a Park Fee credit in the amount of \$498,573.20. The process for requesting a Park Fee credit is set forth in LBMC Sections 18.18.100 (Credits) and 18.18.140 (Appeals).

The Oceanaire project is the third and final phase of the original Camden Development, Inc., project, which comprised a 13-acre site at 150-400 West Ocean Boulevard, bounded by Ocean Boulevard to the north, Pine Avenue to the east, Seaside Way to the south, and Magnolia Avenue to the west. It was originally approved by the Planning Commission on November 16, 2000. Since the original approvals, LMC purchased the property from Camden and is the developer of Phase 3 of the Camden Development. In compliance with applicable zoning and LCP provisions, the project conditions of approval (including EIR mitigation measures), and subsequent modifications to the original project, LMC is required to dedicate and improve Victory Park and pay all applicable impact fees, including Park Fees, as set forth in LBMC Chapter 18.18.

As the project is located in PD-6, the requirement to dedicate and improve Victory Park applies. This requirement is applicable to all properties fronting Ocean Boulevard, adjacent to

either Victory or Santa Cruz Parks and has been consistently applied to other projects that front Ocean Boulevard. LMC's requirement to provide an additional 4,042 square- feet to Victory Park, for park purposes, stems from LMC's original request for permission to install utility transformers in two non-permissible locations, within a portion of Victory Park adjacent to the project site during an earlier phase of the Camden Development project. This requirement was included in the California Coastal Commission's approval of a "Major Amendment" to the City's LCP dated April 20, 2006, and subsequently codified by the City in Ordinance No. C-06-0024, as well as the conditions of approval of a 2006 Site Plan Review modification (Attachments J and K), and in amendments to the PD-6 Zoning Regulations (Attachment A). The additional square-footage represents a 2:1 park land replacement ratio, as required by both City Charter Section 905, and in this case, the California Coastal Commission.

Other properties, that front Ocean Boulevard are similarly subject to the requirements of the PD-6 zone and the Victory Park Design Guidelines, have also been required to dedicate and improve Victory Park, in compliance with the zoning regulations, in addition to paying Park Fees. Other projects that demonstrate that this requirement has been consistently imposed on projects subject to these zoning and LCP regulations are noted below (Attachments Q, R, and S).

<u>Projects</u>	<u>Park Fees Paid</u>
1. Aqua Condominiums (388 E. Ocean Blvd.)	\$575,453.97
2. West Ocean Association (400 W. Ocean Blvd.)	\$273,240.00
3. Camden Harbor View Apartments (250 W. Ocean Blvd.)	\$248,400.00

The Oceanaire project received its building permits on April 6, 2017, and began construction immediately. LMC has used Victory Park, as well as adjacent public rights-of-way, as staging areas for construction, for more than two years, completely fencing the perimeter of Victory Park and depriving the public of any access thereto for the entirety of that time. The City has not charged LMC any fees to use these areas for staging and construction purposes.

### Victory Park History and Applicable Regulations

Victory Park was deeded to the City in 1889 and was permanently dedicated for public park purposes by Ordinance No. C-5617, adopted by City Council on July 15, 1980. It has functioned as a passive linear park in the Greater Downtown since 1919. Victory Park stretches approximately one mile east to west from Alamitos Avenue to Golden Avenue and is within the Downtown Shoreline Planned Development PD-6 zoning district. During the building boom of the 1920's, fueled by the oil discovery in Signal Hill and the Alamitos Bay area, buildings were built between Victory Park and the high tide line. Many of the developers of the buildings wanted access to their buildings from Ocean Boulevard. The City granted such access in many cases in exchange for the developers landscaping the park and establishing roadways to the high tide line, then defined by Seaside Way. In accordance with

relevant provisions of the PD-6 zone (Ordinance No. 11-0017), all projects within the area governed by the PD-6 zone are required to dedicate and improve Victory Park.

PD-6 describes the following requirements for the subject site (Subarea 4) related to open space generally, and to Victory Park specifically:

Subarea 4 (a) Uses: The Victory Park strip in this subarea shall be a dedicated City Park.

Subarea 4 (d) Special Design Features.

3. Five (5) major open space areas shall be provided within the site. Such open spaces shall connect to either the east/west walk or to the north/south walks.

7. Victory Park Strip. The segment of Victory Park situated between the extended right-of-way of Pacific Avenue and the Ocean Center office building (110 W. Ocean Blvd.), shall be enlarged by at least 4,042 square-feet through additional private land dedications. The required additional 4,042 square-feet of dedicated public parkland shall be provided beyond the eighty-foot (80') building setback (from Ocean Boulevard curb line) required pursuant to Section (c)4 (Building Design) of the PD-6 General Development and Use Standards.

Other adopted planning documents also require developments on Ocean Boulevard to dedicate and make specific improvements to Victory Park. In 1980, the City Council and the California Coastal Commission, certified the LCP. The LCP specifies the following for "The Pike Area: An eighty-foot-wide public park strip shall be maintained along the Ocean Boulevard frontage (Victory Park Design Guidelines)." Consistent with the Victory Park Design Guidelines adopted October 26, 1989, the LCP reinforces Victory Park as a unified park throughout Downtown Long Beach. The LCP requires all new development and conversions of apartments to condominiums to renovate Victory Park, according to those Design Guidelines, and to dedicate additional depth to the park to create a minimum depth of 80-feet from the Ocean Boulevard curb. The Victory Park Design Guidelines' stated purpose is "to ensure that the land is available for the enjoyment of the citizens and general public of Long Beach. At the same time, the guidelines serve to coordinate the design and renovation of the park to cause a design that is reminiscent of historic Long Beach and reinforces the character of Ocean Boulevard, as a grand boulevard." The Design Guidelines seek to create a unified look with similar trees and shrubs for a passive public park with park benches and with at least two-thirds of the park covered with turf (see Santa Cruz Park and Auditorium Park). The Victory Park Design Guidelines are also codified in the PD-6 zone development standards. The Park has been partially or completely rehabilitated or restored on six blocks since this requirement was established.

### Park Fee Need/Benefit

Long Beach's Park Fee regulations require all new development to pay Park Fees above and beyond any zoning or site requirements. These fees are an important source of revenue for upgrading and expanding existing parks and building new park facilities, all of which are necessary for the City to maintain existing level of service standards as the City adds new households. The Park Fees have paid for and/or leveraged funding for numerous projects throughout the City (Attachment T). New residential development brings more people who use parks, increasing demand, as well as wear and tear, on grounds and facilities. Park Fees are calculated by facility needs, which are based on a facility level of service standard that represents the demand generated by new development for those facilities. If Park Fees are not paid/collected as development occurs, then existing parks will become more crowded and the level of service to existing and new residents becomes eroded over time.

### CONCLUSION

It is recommended that the City deny the appeal/protest by LMC and require LMC to pay the Park Fee, as it has consistently been applied to other development projects along Victory Park in the past, and deny the applicant's request for a Park Fee credit, as it is consistent with the requirements of the LBMC, the City's certified LCP, the applicable zoning regulations, as it is reflected in the project's conditions of approval, and in compliance with environmental mitigation measures as required by CEQA.

The City has not charged LMC any fees to occupy Victory Park and adjacent public rights-of-way for staging during the two-year construction period (Attachment U). In any situation where a private applicant uses public land for temporary construction staging, the applicant is required to return the land to the City in an improved state, in accordance with City requirements. In the case of public rights-of-way, such as streets and sidewalks, the LBMC determines the standards for those improvements (e.g., concrete sidewalk with curb and gutter). In the case of the subject property, LMC is required to return to the City, the area of the dedicated Victory Park, as a park and the PD-6 zone and Victory Park Design Guidelines specify the standards to which those improvements must be built, upon project completion.

Developers, such as LMC, benefit from higher rents or unit sales prices from the improved amenities that result from park improvements that are "at their front door," whether derived from Park Fees or improvements required as conditions of project approval. In the case of Oceanaire, Victory Park is directly adjacent to its property and its residents are direct beneficiaries of these public spaces, which enhances the value of LMC's property.

This matter was reviewed by Assistant City Attorney Michael J. Mais and Budget Analysis Officer Julissa José-Murray on June 27, 2019.

LBMC Section 18.18.140.C. requires the City Council to conduct a hearing within 160 days after an applicant files a valid appeal. This hearing is requested on July 16, 2019, to respond in a timely fashion to LMC's appeal/protest of the imposition of the Park Fee in accordance

with Chapter 18.18 of the LBMC.

Approval of the recommended action, to deny the appeal, would result in no fiscal impact to the City as fees were previously collected. Granting the appeal will result in an adverse \$498,573.20 impact to the Park Impact Fee Fund, reducing the City's ability to construct and upgrade park and recreation facilities. This recommendation will have no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. There is no local job impact associated with this recommendation.

Approve recommendation.

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LINDA F. TATUM  
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

PATRICK H. WEST  
CITY MANAGER