TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER  DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: MARCH 15, 2004

SUBJECT: 2957 WAVERLEY AVENUE: REQUEST BY CHUCK BRADLEY FOR A PARTIAL REFUND OF DEVELOPMENT IMPACT FEES PAID IN NOVEMBER 2002 ON A SECOND RESIDENTIAL UNIT

RECOMMENDATION
Staff recommends that the City Council consider the request for partial refund and direct staff to introduce an ordinance clarifying the Council’s intent to make the reduced fees for multi-family residential dwelling units smaller than or equal to 900 square feet apply retroactively to all applicable developments approved on or after the date the original fee was established (January 29, 2002).

BACKGROUND
On April 8, 2002, the City Council adopted impact fees that are collected from residential projects for the City’s parks, libraries and community center facilities. On October 7, 2002, the City Council adopted an ordinance reducing these fees for multi-family residential dwelling units smaller than or equal to 900 square feet from a total of $6,930 to $3,500. The Ordinance took effect on November 7, 2002.

One of the projects subject to the impact fees was the replacement of a single family dwelling at 2957 Waverley of approximately 925 square feet with a new residence of approximately 2,600 square feet and a second unit of approximately 900 square feet. The larger unit was not subject to development impact fees because it replaced an existing home. The second unit was subject to the fees.

The larger unit was approved in June 2002. The second unit was approved on August 26, 2002. Development impact fees were paid when the building permit was issued on November 21, 2002. (See timeline of project approvals – Attachment A.)

On March 1, 2004 City Council considered a request by the property owner at 2957 Waverley Avenue to partially refund the impact fees paid in November 2002 because the
lower fee for multi-family units, which took effect on November 7, 2002 did not apply to projects approved prior to that date (CMR174:04).

**DISCUSSION**
When the Council considered this request on March 1, 2004, it directed staff to provide information on the following questions:

1. Can the City legally give Mr. Bradley a refund, and if so, how?
The Council can act on Mr. Bradley’s request by adopting an ordinance clarifying its intent to make the reduced fees apply retroactively to all applicable developments approved on or after the date the original fee was established (January 29, 2002). A draft copy of such an ordinance is attached as Attachment B.

2. How many projects were similarly affected by the fee change?
Five residential projects were subject to the higher fees. These are listed below:

<table>
<thead>
<tr>
<th>Address</th>
<th>Description</th>
<th>Fees Paid?</th>
</tr>
</thead>
<tbody>
<tr>
<td>2957 Waverley Avenue</td>
<td>2nd unit</td>
<td>Yes</td>
</tr>
<tr>
<td>727 Addison</td>
<td>2nd unit</td>
<td>Yes</td>
</tr>
<tr>
<td>124 Emerson</td>
<td>2nd unit attached to garage</td>
<td>Yes</td>
</tr>
<tr>
<td>2051 El Camino Real</td>
<td>2 units (part of a mixed use project)</td>
<td>No</td>
</tr>
</tbody>
</table>

3. What is the total fee difference if the reduced fees were retroactively applied to all similar projects approved on or after January 29, 2002?
The difference is $3,430 per unit ($6,930 – $3,500). Applied to all five residential units the total amount is $17,150 ($3,430 x 5 units).

4. If Council adopts the proposed ordinance retroactively applying the reduced fees, how will it be implemented?
If the Council chooses to adopt the proposed ordinance, upon its effective date, staff will issue partial refunds to the applicants listed above who paid impact fees based on the higher fee amounts. The applicant at 2051 El Camino Real has not yet paid impact fees on that project. If the project is built as approved, staff would apply the reduced fees.

**RESOURCE IMPACT**
The resource impact of retroactively applying the reduced fee amounts is $17,150. Payment would be made from the impact fee funds designated for parks, libraries and community centers.
ATTACHMENTS
A. Timeline of Project Approvals
B. Draft ordinance
B. Minutes of City Council Meeting, September 17, 2002.

PREPARED BY:  ________________________________________
DANIEL SODERGREN
Special Counsel

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STEVE EMSLIE
Director of Planning and Community Environment

CITY MANAGER APPROVAL:  ________________________________________
EMILY HARRISON
Assistant City Manager

cc: Chuck Bradley