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Atherton residents, businesses to get refund on road impact fees

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Anyone who wrote a check to the town of Atherton for "road impact fees" between July 2006 and September 2009 will soon be eligible for a refund, town officials said Friday.

At its regular meeting last week, the Atherton City Council voted 3-1 to authorize \$1.6 million in refunds. Mayor Kathy McKeithen dissented and Vice Mayor Jim Dobbie was absent.

"Details of the refund program will be reviewed by the council at its March 17th meeting," City Manager Jerry Gruber said in a statement this week. "Refund claim forms are expected to be available in April and will be posted on the town Web site and available at city hall and the building department."

If refund requests exceed the \$1.6 million the town has allotted, officials will pro-rate the payments, according to town officials. In December the city council decided to rescind the fees, in part because it wasn't clear whether they are legal.

A 2005 court decision "concluded that the vehicle code prohibited impact fees to address damage to roads from vehicle traffic," Gruber's statement said. "Complicating factors were (Atherton's) failure to follow certain procedures for a 2007 fee increase or

to hold annual hearings on expenditures of the Road Impact Fee, as required by California's Mitigation Fee Act."

Earlier this month, Portola Valley suspended its road impact fee, also because of legal concerns, even though it had followed protocol by completing an extensive nexus study, Assistant City Manager Janet McDougall said.

"The town wants to err on the side of caution, and we're basically awaiting pending further development," McDougall said.

Atherton hasn't officially determined how the pro-rating of refunds will work should it become necessary but hopes to nail those details down at the March council meeting, Finance Director Louise Ho said Friday.

"My understanding currently is that the first group of people that council approved from the 90-day refunds, those would get 100 percent of their money," Ho said, referring to those who paid fees in the 90 days before the council rescinded them in December. Everyone else would probably get a portion of each dollar owed them should the number of refunds requested amount to more than \$1.6 million, she said.

However, the council will ultimately decide how to proceed.

Between November 2000 and December 2009, the town collected \$5.5 million in road impact fees, which seek to offset the wear and tear construction projects incur on local streets. About \$4 million of that money went to road improvements over the years, Ho said.

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In 2007 the council approved a staff recommendation to increase the fees by about 40 percent, angering some residents and businesses, Council Member Charles Marsala said.

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"A few cities in the state have road impact fees in place, but their fees are so much less than ours that residents accept them," Marsala said. "You get in trouble when you have something that is \$40,000 to build a home and \$100,000 to build a gym."

Mayor McKeithen said she dissented last week because she felt the town should limit the refunds to a smaller time frame and give them primarily to those people who filed formal complaints or paid the fees in 2006 or during a period in 2007 when the rules about protesting were unclear.

"The question was, what was legal and what was equitable, in my mind," McKeithen said Friday. "I felt that my solution attained both of those goals while also being a steward of public funds. Construction vehicles do do damage to public roads, and there's no other way that they pay for the damage."

Meanwhile, Menlo School is preparing to request a refund on about \$133,000 in road impact fees it paid for construction of a gymnasium on its campus, spokesman Alex Perez said.

"We did file a letter of protest on the matter," Perez said. "We have a fiduciary responsibility to our donors."

December wasn't the first time Atherton rescinded or reduced a fee in recent years. In 2006 the town eliminated an off-haul fee after determining it wasn't legal and reduced its business license tax in December 2008, Marsala said.

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