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San Clemente owes property owners \$9 million, lawsuit says

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A lawsuit against San Clemente seeks to force local government to refund more than \$9 million in beach-parking impact fees and interest that the city is holding after collecting fees over the last 23 years from homes built in parts of town outside the state-designated coastal zone.

In a lawsuit filed Wednesday in Orange County Superior Court, Brad Malamud says the beach parking fund has not produced any new parking for San Clemente's beaches. He said the money just sits in a fund, except for some funds he says the city spent improperly on parking studies and some the city spent to help buy a piece of land for beach parking. The parcel that the city purchased in 1994 at 1832 N. El Camino remains vacant, Malamud said.

City Manager George Scarborough had no immediate response to the lawsuit. "We have not yet reviewed it," he said via e-mail.

"I didn't want to bring a lawsuit," Malamud said. "I wanted to work behind the scenes to work it out."

In May he appeared before the City Council, presenting his case and asking the council to order refunds. City Attorney Jeff Goldfarb said, at the time, that he would have to look into the assertions. Malamud said this week that he continued to press for answers until, in June, he received a letter from the city stating that the city "is not currently obligated to refund any money in the Beach Parking Impact Fee account."

The lawsuit names two property owners – Daniel Walker and Justin McCarthy – as plaintiffs against the city. The City Council enacted the fee in 1989 on the basis that homes built outside the California coastal zone would pay to mitigate an added demand for beach parking that the new homes' residents would create.

The suit asserts that "the anticipated need never arose and, notwithstanding the fact that the city may not lawfully use the funds for any purpose other than a refund, the city has failed to return these impact fees to the property owners that are entitled to them."

The suit estimates that the fund, with accumulated interest, now holds \$9.7 million. Besides a refund, the lawsuit calls for a return of \$337,280 that the city purportedly spent from the beach-parking fund to pay 70 percent of the purchase price of the parcel at 1832 N. El Camino Real.

Malamud estimated the parcel's current fair-market value at \$2 million and said that 70 percent of the fair-market value should be returned to the beach-parking fund to cover 17 years that the lot has sat with no parking paved and striped onto it.

The fee started out at \$1,500 per home and was reduced in 1996 to \$750 plus inflationary increases, Malamud said. It could be back above \$1,000 now, Malamud said. "We don't know how many lots there were," he added. The suit says "over 5,200 lots" but Malamud said it could be well over that. The fund also has been accruing interest for 23 years, he said.

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