

RESOLUTION NO. 22-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN CLEMENTE, CALIFORNIA DIRECTING THE  
TRANSFER OF FUNDS FROM THE BEACH PARKING  
IMPACT FEE FUND TO THE GENERAL FUND

WHEREAS, the City of San Clemente ("City") previously levied a development impact fee for beach parking (the "Beach Parking Impact Fee" or "BPIF") that resulted in litigation initiated by Walker and McCarthy, *Daniel Walker, as Trustee for the 1997 Walker Family Trust, and W. Justin McCarthy v. City of San Clemente, City Council of San Clemente*, Case No. 30-2012 00591239 ("Legal Action"); and

WHEREAS, as part of the California Superior Court's order in the Legal Action, the City was required to transfer money to a BPIF Fund and use the money in the BPIF Fund to refund property owners who were billed for the BPIF in accordance with the terms and conditions set forth in said order; and

WHEREAS, Section 7 of the California Superior Court's March 16, 2017 order in the Legal Action states that any leftover, unclaimed funds from the BPIF Fund shall escheat back to the City pursuant to California law; and

WHEREAS, California Government Code Section 50050 *et seq.* allows the City to take ownership of unclaimed funds it has held for three or more years after initiating a notice and claims process; and

WHEREAS, the City has compiled a list of all owners and addresses for which BPIF were paid, this list was continuously posted on the City's website. The list established the eligibility of refund payments to property owners based on City payment records and property ownership referenced in the County Assessors Property Tax list on July 1, 2014 which verified ownership on January 1, 2014. On March 2, 2017 the City entered into an agreement with Bank of New York Mellon (BNY Mellon) to facilitate the refund process. Correspondences were sent to all property owners with instructions to claim the refund. In December 2018, BNY Mellon returned the remaining \$1,791,153 unclaimed balance back to the City and the City took over the refund process for the remaining unclaimed BPIF refunds. In April of 2020 the City sent out a second correspondence to property owners to submit a claim. In aggregate the City has refunded 81% of BPIF dollars to eligible property owners for a total of \$7,271,685 with \$1,656,916 representing the remaining unclaimed balance; and

WHEREAS, the City has published notice, as required by law, that it will take ownership of unclaimed funds, in the San Clemente Times on October 7, 2021 and October 14, 2021. Proof of publication of each notice is attached hereto and incorporated herein as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Clemente, California as follows:

Section 1. The City has complied with all requirements of the Court's final judgment and order from the Legal Action, and the City has complied with all requirements of California's escheatment statutes (commencing with Section 50500 of the Government Code).


Section 2. All unclaimed money remaining in the City's BPIF Fund has become the property of the City as of November 23, 2021. The City Treasurer shall resolve all outstanding claims, if any, and immediately transfer all unclaimed BPIF funds, other than any funds withheld due to anticipated or ongoing litigation (pursuant to Government Code Section 50052), to the City's General Fund. The City Treasurer shall transfer to the General Fund any and all funds withheld due to anticipated litigation as soon as the City Treasurer determines the funds will not be subject to litigation, consistent with Government Code Section 50052. The City Treasurer shall transfer to the General Fund, or return to the claimant, any funds subject to ongoing litigation only after the court has rendered a decision as to those funds.

Section 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this 7 day of June, 2022.

ATTEST:

  
City Clerk of the City of  
San Clemente, California

  
Mayor of the City of San  
Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) §  
CITY OF SAN CLEMENTE )


I, LAURA CAMPAGNOLO, Legislative Administrator of the City of San Clemente, California, do hereby certify that Resolution No. 22-26 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 7 day of June, 2022, by the following vote:

AYES: DUNCAN, KNOBLOCK, WARD, MAYOR JAMES

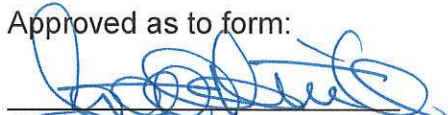
NOES: NONE

ABSENT: FERGUSON

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 20th day of June, 2022.

  
Legislative Administrator  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
City Attorney



**PROOF OF PUBLICATION**

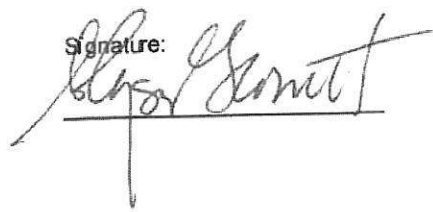
34932 Calle del Sol, Ste. B  
Capistrano Beach, CA 92624  
949-388-7700  
949-388-9977 fax

I am a citizen of the United States and a resident of the County aforesaid: I am over 18 years of age, and not a party to or interested in the above-titled matter. I am the principal clerk of the publisher of the San Clemente Times, a newspaper of general circulation adjudicated for the City of San Clemente, County of Orange and which newspaper has been adjudicated as a newspaper of general circulation by the Superior Court of the County of Orange, State of California on Nov 9th, 2018, Case Number 01017680; that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

Published in:  
SAN CLEMENTE TIMES  
Run Dates: October 7 & 14, 2021

Executed: October 7, 2021  
At San Clemente, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature: 

**PUBLIC NOTICE**

Notice is hereby given by the City of San Clemente ("City") that the City is in possession of certain refundable monies as set forth in more detail below. The refundable monies are being held in the City's Beach Parking Impact Fee Fund Payable (account number 068-000-21163-000-00000), and the refundable monies add up to a combined total of \$1,670,985.20. Pursuant to Government Code section 50050 et seq., it is proposed the unclaimed monies shall become the property of the City on November 23, 2021.

The City has complied with all requirements of the Court's final judgment and order from the Walker v. San Clemente matter. Per the judgment the City compiled a list of all owners and addresses for which Beach Parking Impact Fees (BPIF) were paid, this list was continuously posted on the City's website. The list established the eligibility of refund payments to property owners based on City payment records and property ownership referenced in the County Assessors Property Tax list on July 1, 2014 which verified ownership on January 1, 2014. On March 2, 2017 the City entered into an agreement with Bank of New York Mellon (BNY Mellon) to facilitate the refund process. Correspondences were sent to all property owners with instructions to claim the refund. In December 2018, BNY Mellon returned the remaining \$1,791,153 unclaimed balance back to the City and the City took over the refund process for the remaining 1,334 unclaimed BPIF refunds. In April of 2020, the City sent out a second correspondence to the remaining eligible property owners and successfully refunded approximately 100 property owners totaling \$120,168. In aggregate the City refunded 5,256 eligible property owners for a total of \$7,257,617 or 81% of BPIF dollars.

If you believe you are entitled to any of the funds described below and listed on the City's website,

please file a claim with the City Treasurer in writing at 910 Calle Negocio, San Clemente, CA 92673. You MUST file your claim before November 23, 2021. Proof of eligibility is required. To make a claim, please submit in writing all of the following: name, address, daytime telephone number, proof that you are the depositor or an authorized representative of the depositor, amount of claim, and the grounds for the claim. Submit your claim to the attention of the City Treasurer, Mark A. Taylor and reference BPIF Refund. The City Treasurer reserves the right to request additional information and may accept or reject a claim. If a claim is rejected, the claimant may file a verified complaint seeking to recover all, or a designated part, of the unclaimed monies in a court of competent jurisdiction within Orange County and serve a copy of the complaint and summons upon the City Treasurer. A copy of the complaint and summons must be served within thirty (30) days of receiving the City's notice the claim was rejected.

The Beach Parking Impact Fee Fund contains monies refundable to eligible property owners of record within the City of San Clemente that appear on the County Assessor's Property Tax list per the July 1, 2014 tax roll (reflecting ownership as of January 1, 2014) whose property was subject to the City's Beach Parking Impact Fee. Any funds that remain on account on November 23, 2021 shall be forfeited in accordance with Section 50050 et seq. of the Government Code.

A list of properties eligible for a refund, the amount of the refund, and more details, can be found at <https://www.san-clemente.org/bpif/>. You can also request the list of properties eligible for a refund, and the accompanying refund amounts, by contacting the City via email at [bpifrefund@san-clemente.org](mailto:bpifrefund@san-clemente.org) or by calling (949) 226-4311.

Joanne Baade  
City Clerk and Ex-Officio Clerk of the Board