

ORDINANCE NUMBER O- 20038 (NEW SERIES)

DATE OF FINAL PASSAGE APR 25 2011

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 98.0604, 98.0607, 98.0609, 98.0610, 98.0611, 98.0613, 98.0614, AND 98.0618; RENUMBERING SECTION 98.0618 TO 98.0619; AND ADDING A NEW SECTION 98.0618, ALL RELATING TO HOUSING IMPACT FEES ON COMMERCIAL DEVELOPMENT.

WHEREAS, as part of the City's comprehensive application submitted to the State of California to win designation of the San Diego Regional Enterprise Zone (SDREZ), the City was required to make a number of commitments including the provision of "local incentives"; and

WHEREAS, as its "local incentive", the City agreed to continue to provide fee relief from the Housing Impact Fee (HIF) for new Nonresidential Development Projects within the SDREZ, and to propose amendments to the San Diego Municipal Code to provide a clear and unambiguous direction for the local fee-relief incentive;

WHEREAS, at a public hearing on March 22, 2011, the City Council revised this ordinance as proposed to further amend Chapter 9, Article 8, Division 6 of the San Diego Municipal Code by replacing "City Engineer" with "the Mayor or his or her designee" throughout the Division; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 9, Article 8, Division 6 of the San Diego Municipal Code is amended by amending Sections 98.0604, 98.0607, 98.0609, 98.0610, 98.0611, 98.0613, 98.0614, and 98.0618; renumbering Section 98.0618 to 98.0619; and adding a new Section 98.0618; to read as follows:

§98.0601 through §98.0603

[No change in text.]

§98.0604 Definitions

The following definitions shall apply to this Division:

- (a) Addition shall mean adding gross square feet to an existing non-residential development project subject to this section.
- (b) Area Median Income shall mean the median income in the San Diego Standard Metropolitan Statistical Area, adjusted for family size, as published by the United States Department of Housing and Urban Development.
- (c) Construction shall mean the building of a new non-residential development project subject to this Division.
- (d) Gross Square Feet shall mean the total of all square feet of floor area included within the surrounding walls of the non-residential development project as determined by the Mayor or his or her designee. This area does not include garages or carports.
- (e) Housing Unit shall mean a new dwelling unit of any tenure type or price, including the rehabilitation of dangerous residential buildings as defined in the San Diego Municipal Code.
- (f) Interior Remodel shall mean a tenant improvement which results in a change in the type of use of the non-residential development project that increases the employee density of the project as determined by the Mayor or his or her designee.

- (g) Low Income Households shall mean those households with gross incomes adjusted for family size at or below eighty percent (80%) of area median income, but more than fifty percent (50%) of area median income.
- (h) Median Income Households shall mean those households with a gross income adjusted for family size at or below one hundred percent (100%) of the area median income.
- (i) Nonresidential Development Project shall mean any commercial or industrial use as provided in the San Diego Municipal Code and includes any other related use that is determined by the Mayor or his or her designee to fall within the use categories determined by the Nexus Study to impact housing demand.
- (j) Very Low Income Households shall mean those households with gross incomes at or below fifty percent (50%) of the median area income in the City of San Diego as set forth from time to time by the U.S. Department of Housing and Urban Development.

§98.0605 through §98.0606

[No change in text.]

§98.0607 **Location of Units To Be Assisted With Impact Fees Subaccount Monies**
Funds in the impact fee subaccount may be utilized to assist units located anywhere within the boundaries of the City of San Diego. If at any time the Housing Commission determines that, in consultation with the Mayor or his or her designee and Planning Department, that City boundaries and transportation

facilities have changed such that the geographic nexus between the payors of funds pursuant to this Division and the housing units assisted has been substantially reduced, the Housing Commission shall develop and present to the City Council recommendations which establish maximum distances between assisted housing and development subject to this Division, divide the City into zones, or otherwise ensure a proper geographic nexus.

§98.0608 [No change in text.]

§98.0609 Exemptions

The fee requirements of this Division shall not apply to uses indicated as exempt in Sections **98.0608** and **98.0618**.

§98.0610 **Housing Fee Requirement: Payment of Fee As A Condition of Issuance of A Building Permit**

Except as provided elsewhere in this section, no **Building Permit** shall be issued for construction of, or interior remodel of, any Non-Residential Development Project, subject to this Division unless and until the fee provided for in this Division is paid to the City. The amount of the fee shall be computed as follows: Gross Square Feet Non-Residential Space X (Applicable Fee by type of use as determined by the Mayor or his or her designee by application of APPENDIX A to this Division) = Housing Payment. For purposes of this Division, the fees for an interior remodel shall be the fees for the new use, less any fees that either were paid or would have been paid based on the original use of the building.

§98.0611 **Determination of Fee**

The Mayor or his or her designee shall determine the amount of the fee, which shall be collected by the City Treasurer and deposited in accordance with Section 98.0605. The Mayor or his or her designee shall utilize the definitions as contained in the San Diego Municipal Code to relate the anticipated use of the non-residential development project to a category of use in APPENDIX A and a resulting fee per square foot, or to identify the use as exempt.

§98.0612 [No change in text.]

§98.0613 **Administration of Land or Air Right Dedication**

An applicant for a building permit for any non-residential development project subject to this Division who elects to proceed under Section 98.0612 in lieu of payment of a fee under Section 98.0610 shall apply to the Commission for a Certificate of In Lieu Housing Impact Fee Payment. The application shall describe the proposed land or air rights to be dedicated, the factors which render the land or air rights suitable for use for San Diego Housing Trust Fund purposes, an independent appraisal of the fair market value of the property, and an irrevocable offer of dedication of such land or air rights or an equivalent document. The Commission shall conduct an evaluation of the application including a second appraisal if appropriate. Upon a determination by the Commission that the proposed dedication meets the requirements of Section 98.0612 above, the Commission may issue a Certification of In Lieu of Impact Fee Payment. On presentation, the Mayor or his or her designee shall accept such certificate as the required compliance with this Division.

§98.0614 **Variances**

A variance from the provisions of this Division may be granted to an applicant by the Commission. The applicant must file an application with the Commission for a variance any time after the determination of the Mayor or his or her designee pursuant to Section 98.0610, but prior to issuance of the building permit. Any hearing required by the provisions of this Division shall be governed by the provisions of this Code. The application for a variance shall include financial and other information that the Commission determines is necessary to perform an independent evaluation of the applicants' rationale for the variance and shall be a matter of public record.

§98.0615 through §98.0617

[No change in text.]

§98.0618 **Exemptions within an Enterprise Zone**

The fee requirements in this Division shall not apply to Nonresidential Development Projects that satisfy all of the following requirements:

- (a) The physical facilities within which the Nonresidential Development Project will be conducted are entirely located within a California State-designated Enterprise Zone; and
- (b) The applicant for a Building Permit for a Nonresidential Development Project enters into a written Economic Development Agreement with the City whereby the applicant agrees to give first preference in hiring to City residents who reside within either the applicable Enterprise Zone or the San Diego Targeted Employment Area; and

- (c) The primary use of the Nonresidential Development Project is one of the following:
- (1) Heavy Manufacturing, as described in San Diego Municipal Code section 131.0112(a)(10)(A);
 - (2) Light Manufacturing, as described in San Diego Municipal Code section 131.0112(a)(10)(B);
 - (3) Wholesale Distribution, as described in San Diego Municipal Code section 131.0112(a)(9)(D);
 - (4) Research and Development, as described in San Diego Municipal Code section 131.0112(a)(10)(D);
 - (5) Urgent Care Facilities, as described in San Diego Municipal Code section 141.0624; or
 - (6) Hospitals, intermediate care facilities, and nursing facilities.

§98.0619 Revisions To Appendix A

The fees set forth in APPENDIX A shall be revised effective March 1 of each year by the percentage increase or decrease in the building cost Index of the Cost Indices for Twenty Cities published by M.C. McGraw–Hill, Inc. or its successor for the twelve–month period ending January 1 of each year. The Commission, in consultation with the Mayor or his or her designee shall prepare a recommendation to the Council for such revision on an annual basis.

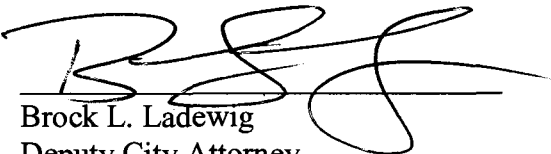
**Appendix A of Division VI of The San Diego Housing
Trust Fund Ordinance and of Chapter 9 Article 8
of The San Diego Municipal Code**

[No change in text.]

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

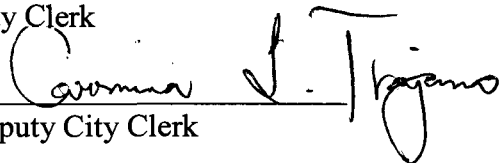
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Brock L. Ladewig
Deputy City Attorney

BLL:mcm
3/11/2011
3/29/2011 Rev. Copy
Or.Dept:CPCI
PL#2011-05281

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 12 2011

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 4.25.11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor