

ORDINANCE NUMBER O- 20333 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 24 2013

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 98.0601, 98.0604, 98.0606, 98.0608; BY REPEALING 98.0609; BY AMENDING SECTIONS 98.0610, 98.0611, 98.0614, 98.0615, 98.0618, 98.0619, AND APPENDIX A, ALL RELATING TO HOUSING IMPACT FEES ON NONRESIDENTIAL DEVELOPMENT IN THE CITY OF SAN DIEGO.

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 98.0601, 98.0604, 98.0606, 98.0608, by repealing section 98.0609, by amending sections 98.0610, 98.0611, 98.0614, 98.0615, 98.0618, 98.0619, and Appendix A, to read as follows:

§98.0601 Purpose

It is the policy of The City of San Diego that new nonresidential development, which includes but is not limited to office, retail, research and development, manufacturing, warehouse, and hotel development, pay a fair share of the costs of subsidy necessary to house the low, very low, and extremely low income employees who will occupy the jobs new to the region related to such development, including those who are at risk of becoming unemployed. Such Housing Impact Fees on nonresidential development also may be called Workforce Housing Offset Program Fees.

§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 Division.
- (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, as adjusted from time to time by the United States Department of Housing and Urban Development.
- (c) through (h) [No change in text.]
- (i) Nonresidential Development Project shall mean any commercial or industrial use, as provided in the San Diego Municipal Code or 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 area median income, as adjusted from time to time by the U.S. Department of Housing and Urban Development, and includes extremely low income households, which are those households with gross incomes at or below 30 percent (30%) of the area median income, as adjusted from time to time by the U.S. Department of Housing and Urban Development.

§98.0606 Deposit of Fees in San Diego Housing Trust Fund

Fees collected pursuant to this Division shall be deposited at the time collected, or soon thereafter, in the San Diego Housing Trust Fund subaccount to be used for the purposes stated in sections 98.0504 and 98.0507. Such funds may be used to defray the cost of collection consistent with the provisions of section 98.0518.

§98.0608 Application of the Housing Fee Requirement

(a) This Division shall apply to non-residential development projects that are proposing the construction, addition or interior remodeling of any non-residential development project. This Division shall apply to mixed or combined use projects if such projects propose the construction, addition or interior remodeling of non-residential uses. Notwithstanding the foregoing, this Division shall not apply to projects which fall within one or more of the following categories:

(1) through (5) [No change in text.]

(6) Any construction which is for any general government purposes.

§98.0610 Housing Fee Requirement: Payment of Fee as a Condition of Performance of a Final Inspection or Issuance of a Certificate of Occupancy

Except as provided elsewhere in this Division, the City shall not perform a final inspection or issue any Certificate of Occupancy related to the construction of, or interior remodel of, any non-residential development project, subject to this Division unless and until the fee required by this Division is paid to the City.

§98.0611 Determination of Fee

(a) The Mayor or his or her designee shall determine the amount of the fee required by this Division. The Mayor or his or her designee shall

determine which of the use categories in Appendix A is applicable or identify the use as exempt.

- (b) The Mayor or his or her designee shall compute the amount of the fee due as follows: the fee equals the number of gross square feet of nonresidential space multiplied by the rate associated with the applicable use category; and the fee for an interior remodel shall equal the fee for the new use of the building minus the fee that either was paid or would have been paid based on the original use.

§98.0614 Variances, Waivers, Adjustments, and Reductions

An applicant may request a variance, waiver, adjustment, or reduction in the amount of the fee required by this Division. To request a variance, waiver, adjustment, or reduction, an applicant must file an application with the Commission. An application for a variance, waiver, adjustment, or reduction may be filed at any time after the determination of the Mayor or his or her designee of the amount of the fee due pursuant to Section 98.0611, but prior to the issuance of the building permit. The application shall include financial as well as any other information that the applicant believes relevant to the request and would allow the decision-maker to perform an independent evaluation of the applicant's rationale for the variance, waiver, adjustment, or reduction.

§98.0615 Process and Standards for Granting a Variance, Waiver, Adjustment or Reduction of Housing Impact Fees for Nonresidential Development

- (a) The Commission may approve or conditionally approve a variance, adjustment, or reduction of a fee required by this Division only upon a determination that all of the following apply:
 - (1) Special circumstances, unique to that project justify the grant of the variance, adjustment, or reduction;
 - (2) The project would not be feasible without the variance, adjustment, or reduction;
 - (3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and
 - (4) [No change in text.]

An applicant may appeal the Commission's determination to the City Council.

- (b) The City Council may approve or conditionally approve an application for a complete waiver of the fees required by this Division if the City Council makes a finding that there is an absence of any reasonable relationship between the impact of the development and the intended use or amount of the fee or the fee requirement.
- (c) An applicant that requests both a variance, adjustment, or reduction as well as a waiver must first seek a Commission determination regarding the variance, adjustment, or reduction so that an appeal of that determination, if any, to the City Council may be consolidated with the waiver hearing before the City Council.

§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) through (c) [No change in text.]

[**Editor's Note:** The availability of exemptions pursuant to section 98.0618 (as adopted by O-20038 N.S.; effective 5-25-2011) is affected by State legislation, including but not limited to Cal. Sen. Bill 90 and Cal. Assembly Bill 93 (2012-2013 Reg. Sess.) (effective Jan. 1, 2014), as it amends relevant State law.]

§98.0619 Revisions to Appendix A

- (a) The rates applicable to each use category are set forth in Appendix A and shall be revised by the Chief Executive Officer of the San Diego Housing Commission by the percentage increase or decrease in the building cost index of the Cost Indices for Twenty Cities published by Engineering News Record or its successor for the twelve-month period ending January 1 of each year.
- (b) The first such revision shall be done in time to make the revised rates effective July 1, 2017. Thereafter, revisions shall occur such that the revised rates are effective July 1 of each year. In the event a revision does not occur, the rates set forth in the most recent revision to Appendix A shall remain effective until the Commission revises the rates in accordance with this section.

Appendix A, Chapter 9, Article 8, Division 6

USE CATEGORY	FEE/BUILDING SQUARE FOOT ¹			
	Rates Effective Through June 30, 2014	Rates Effective July 1, 2014	Rates Effective July 1, 2015	Rates Effective July 1, 2016
Office	\$1.06	\$2.12	\$3.72	\$5.32
Hotel	\$0.64	\$1.28	\$3.01	\$4.73
Retail	\$0.64	\$1.28	\$3.12	\$4.96
R&D	\$0.80	\$1.60	\$2.87	\$4.14
Manufacturing	\$0.64	\$1.28	\$2.17	\$3.05
Warehouse	\$0.27	\$0.54	\$1.41	\$2.28

Footnotes for Appendix A:

¹ The date that shall be used to determine the rate applicable to a project is the date the application for any building permit related to that project is deemed complete, unless otherwise required by law.

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 Keely M. Halsey
Keely M. Halsey
Deputy City Attorney

KMH:als
11/19/13
Or.Dept:SDHC
Doc. No. 676696_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 12/10/13.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 98.0601, 98.0604, 98.0606, 98.0608; BY REPEALING 98.0609; BY AMENDING SECTIONS 98.0610, 98.0611, 98.0614, 98.0615, 98.0618, 98.0619, AND APPENDIX A, ALL RELATING TO HOUSING IMPACT FEES ON NONRESIDENTIAL DEVELOPMENT IN THE CITY OF SAN DIEGO.

Article 8: Housing

Division 6: Housing Impact Fees On ~~Commercial~~ Nonresidential Development

§98.0601 Purpose

It is the policy of The City of San Diego that new nonresidential development, which includes but is not limited to office, retail, research and development, manufacturing, warehouse, and hotel development, pay a fair share of the costs of subsidy necessary to house the low, ~~and very low,~~ and extremely low income employees who will occupy the jobs new to the region related to such development, including those who are at risk of becoming unemployed. Such Housing Impact Fees on nonresidential development also may be called Workforce Housing Offset Program Fees.

§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~~ Division.
- (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, as adjusted from time to time by the United States Department of Housing and Urban Development.
- (c) through (h) [No change in text.]
- (i) Nonresidential Development Project shall mean any commercial or industrial use, as provided in the San Diego Municipal Code ~~and includes~~ or 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 area 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, as adjusted from time to time by the U.S. Department of Housing and Urban Development, and includes extremely low income households, which are those households with gross incomes at or below 30 percent (30%) of the area median income, as adjusted from time to time by the U.S. Department of Housing and Urban Development.

§98.0606 Deposit of Fees in San Diego Housing Trust Fund

Fees collected pursuant to this Division shall be deposited at the time collected, or soon thereafter, in the San Diego Housing Trust Fund subaccount to be used for the purposes stated in Sections 98.0505 98.0504 and 98.0507. Such funds may be used to defray the cost of collection consistent with the provisions of Section 98.0520 98.0518.

§98.0608 Application of ~~T~~the Housing Fee Requirement

(a) This Division shall apply to non-residential development projects that are proposing the construction, addition or interior remodeling of any non-residential development project. This Division shall apply to mixed or combined use projects if such projects propose the construction, addition or interior remodeling of non-residential uses. Notwithstanding the foregoing, this Division shall not apply to projects which fall within one or more of the following categories:

(1) through (5) [No change in text.]

~~(6) — Nonresidential uses located in the Southeast/Barrio Logan Enterprise Zone described in City Council Resolution R-262864 (April 8, 1985).~~

~~(7)~~(6) Any construction which is for any general government purposes.

§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 Performance of a Final Inspection or Issuance of A Building Permit a Certificate of Occupancy

Except as provided elsewhere in this section Division, ~~no building permit shall be issued for the City shall not perform a final inspection or issue any Certificate of Occupancy related to the construction of, or interior remodel of, any Non-Residential Development Project~~, subject to this Division unless and until the fee ~~provided for in~~ required by 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

(a) The Mayor or his or her designee shall determine the amount of the fee required by this Division, ~~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~~ determine which

of the use categories in Appendix A is applicable, and a resulting fee per square foot, or to identify the use as exempt.

- (b) The Mayor or his or her designee shall compute the amount of the fee due as follows: the fee equals the number of gross square feet of nonresidential space multiplied by the rate associated with the applicable use category; and the fee for an interior remodel shall equal the fee for the new use of the building minus the fee that either was paid or would have been paid based on the original use.

§98.0614 Variances, Waivers, Adjustments, and Reductions

An applicant may request a A-variance from the provisions of this Division may be granted to an applicant by the Commission, waiver, adjustment, or reduction in the amount of the fee required by this Division. To request a variance, waiver, adjustment, or reduction, an applicant must file an application with the Commission. The applicant must file an application with the Commission for a variance An application for a variance, waiver, adjustment, or reduction may be filed at any time after the determination of the Mayor or his or her designee of the amount of the fee due pursuant to Section 98.06101, but prior to the 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 as well as any and other information that the Commission applicant believes relevant to the request and would allow the decision-maker determines is necessary to perform an independent evaluation of the applicants' applicant's rationale for the variance, waiver, adjustment, or reduction and shall be a matter of public record.

§98.0615 Process and Standards Ffor Granting a Variance, Waiver, Adjustment or Reduction of Housing Impact Fees for Nonresidential Development

(a) The Commission may approve or conditionally approve a No variance, adjustment, or reduction of a fee required by this Division only upon a determination that all of the following shall be issued to an applicant unless apply:

(a)(1) Special circumstances, unique to that project justify the grant of the variance, adjustment, or reduction;

(b)(2) The project would not be feasible without the modification variance, adjustment, or reduction;

(c)(3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and

(d)(4) [No change in text.]

An applicant may appeal the Commission's determination to the City Council.

(b) The City Council may approve or conditionally approve an application for a complete waiver of the fees required by this Division if the City Council makes a finding that there is an absence of any reasonable relationship between the impact of the development and the intended use or amount of the fee or the fee requirement.

(c) An applicant that requests both a variance, adjustment, or reduction as well as a waiver must first seek a Commission determination regarding the variance, adjustment, or reduction so that an appeal of that determination,

if any, to the City Council may be consolidated with the waiver hearing before the City Council.

§98.0618 Exemptions within an Enterprise Zone

The fee requirements in this Division shall not apply to ~~N~~nonresidential ~~D~~development ~~P~~projects that satisfy all of the following requirements:

(a) through (c) [No change in text.]

[Editor's Note: The availability of exemptions pursuant to section 98.0618 (as adopted by O-20038 N.S.; effective 5-25-2011) is affected by State legislation, including but not limited to Cal. Sen. Bill 90 and Cal. Assembly Bill 93 (2012-2013 Reg. Sess.) (effective Jan. 1, 2014), as it amends relevant State law.]

§98.0619 Revisions ~~T~~to Appendix A

(a) The fees rates applicable to each use category are set forth in APPENDIX Appendix A and shall be revised by the Chief Executive Officer of the San Diego Housing Commission 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. Engineering News Record, or its successor for the twelve-month period ending January 1 of each year.

(b) The first such revision shall be done in time to make the revised rates effective July 1, 2017. Thereafter, revisions shall occur such that the revised rates are effective July 1 of each year. In the event a revision does not occur, the rates set forth in the most recent revision to Appendix A shall remain effective until the Commission revises the rates in accordance

with this section. 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 A₂ of Division VI of The San Diego Housing Trust Fund Ordinance and of Chapter 9₂ Article 8₂ of The San Diego Municipal Code Division 6

APPENDIX A (Sec. 98.0618)

TYPE OF USE	FEE/BUILDING SQUARE FOOT
Office	\$1.06
Hotel	\$0.64
Research & Development	\$0.80
Retail	\$0.64
Manufacturing	\$0.64
Warehouse	\$0.27

<u>USE CATEGORY</u>	<u>FEE/BUILDING SQUARE FOOT¹</u>			
	<u>Rates Effective Through June 30, 2014</u>	<u>Rates Effective July 1, 2014</u>	<u>Rates Effective July 1, 2015</u>	<u>Rates Effective July 1, 2016</u>
<u>Office</u>	<u>\$1.06</u>	<u>\$2.12</u>	<u>\$3.72</u>	<u>\$5.32</u>
<u>Hotel</u>	<u>\$0.64</u>	<u>\$1.28</u>	<u>\$3.01</u>	<u>\$4.73</u>
<u>Retail</u>	<u>\$0.64</u>	<u>\$1.28</u>	<u>\$3.12</u>	<u>\$4.96</u>
<u>R&D</u>	<u>\$0.80</u>	<u>\$1.60</u>	<u>\$2.87</u>	<u>\$4.14</u>
<u>Manufacturing</u>	<u>\$0.64</u>	<u>\$1.28</u>	<u>\$2.17</u>	<u>\$3.05</u>
<u>Warehouse</u>	<u>\$0.27</u>	<u>\$0.54</u>	<u>\$1.41</u>	<u>\$2.28</u>

Footnotes for Appendix A:

- 1 The date that shall be used to determine the rate applicable to a project is the date the application for any building permit related to that project is deemed complete, unless otherwise required by law.

KMH:als
11/19/13
Or.Dept: SDHC
Doc. No. 676565_3

Passed by the Council of The City of San Diego on DEC 10 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherrri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 24 2013

AUTHENTICATED BY: TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Elizabeth Maland, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 04 2013, and on DEC 24 2013

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Elizabeth Maland, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20333