

ITEM 54

ORDINANCE NUMBER O- 20431 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 25 2014

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 98.0601, 98.0608, AND APPENDIX A AND DELETING SECTION 98.0619, ALL RELATING TO HOUSING IMPACT FEES ON NONRESIDENTIAL DEVELOPMENT IN THE CITY OF SAN DIEGO.

WHEREAS, it has been the policy of the City of San Diego that new nonresidential development pay a fair share of the costs to subsidize housing for the low and very-low income employees who will occupy the jobs new to the region related to such development; and

WHEREAS, the City of San Diego's Housing Impact Fees on Commercial Development (also known as Linkage Fees, Housing Impact Fees on Nonresidential Development, or Workforce Housing Offset Program Fees) were initially established through a nexus study performed in 1989, and at that time, fee levels were set at an amount equal to about 1.5 percent of development costs; and

WHEREAS, in 1996, the Housing Impact Fees were reduced by 50 percent, since that time there has not been an adjustment to the fee levels, and the current revenues remain substantially below the original nexus amounts; and

WHEREAS, the Housing Element of the City of San Diego's General Plan contains specific policies and goals for increasing housing opportunities for households at various income levels, such as the use of fees to promote affordable housing, the need to provide workforce housing, and the availability of the Housing Trust Fund (of which the Housing Impact Fees are a part) to pursue the City's housing goals; and

WHEREAS, according to an August 2013 nexus study from Keyser Marston Associates, as supplemented in October 2013 (the 2013 Nexus Study), there is a significant link between nonresidential development and the occurrence of homelessness and the risk of homelessness; and

WHEREAS, the 2013 Nexus Study demonstrates that there is a reasonable relationship between the proposed use and amount of the proposed fees and the impacts caused by the nonresidential development subject to those fees; and

WHEREAS, the 2013 Nexus Study demonstrates, by facts and analysis, that there is an essential nexus between new nonresidential development that employs low, very low, and extremely low income workers, and the need for new housing for the low, very low and extremely low income workers employed within the new developments; and

WHEREAS, the 2013 Nexus Study demonstrates that various percentages of those workers required for the various types of new nonresidential development, as referenced within the 2013 Nexus Study, represent households that are low, very low, and extremely low income households as defined within the San Diego Municipal Code (Municipal Code) and the 2013 Nexus Study; and

WHEREAS, the 2013 Nexus Study demonstrates that the new nonresidential construction is a major contributing cause of the need for additional housing for those low, very low, and extremely low income worker households that does not currently exist and that is needed to house these new worker households; and

WHEREAS, the City Council regularly declares a continuing state of housing emergency in the City of San Diego because of the current lack of affordable housing within the City of San Diego; and

WHEREAS, the City Council finds that the fee established by this ordinance is not being established to ameliorate the existing shortage of affordable housing but only that created by new nonresidential development; and

WHEREAS, the 2013 Nexus Study quantifies, by development type, a per square foot fee that will only partially ameliorate the need for housing for the low, very low, and extremely low income households caused by the new nonresidential development; and

WHEREAS, the fees for new nonresidential development are supported by the 2013 Nexus Study; and

WHEREAS, the City Council finds that the fees are roughly proportional to, but less than, the cost of housing the low, very low, and extremely low income households required by the new nonresidential development; and

WHEREAS, the City Council finds that the fees, on a project by project and individual basis, are being set in a way so that the fees are roughly proportional to, but less than, the public burden caused by the new nonresidential developments and are necessary to allow for the creation and provision of housing for the low, very low, and extremely low income households that work within the new nonresidential developments; and

WHEREAS, the City Council finds that fees are, in aggregate, only a small portion of the total revenue needed to acquire or create or provide housing for the low, very low, and extremely low households, which new housing does not currently exist, since the fees being collected from new development represents a small portion of the total cost for producing the low, very low, and extremely low income housing that is required for the new development due to leverage of the Housing Impact Fees with other revenue sources; and

WHEREAS, the fees being proposed to be collected, in aggregate, are far less than the amount that is roughly proportionally needed for the creation and provision of such housing; and

WHEREAS, the City Council finds that the fees are not subject to the requirements of Proposition 26 because they are charges imposed “as a condition of property development;” and

WHEREAS, the City Council finds that the holding in the United States Supreme Court case of *Koontz vs. St. Johns River Water Management District* was a case involving an ad hoc exaction, whereas the fees established by this ordinance are not such ad hoc fees; and

WHEREAS, even though not legally mandated, the City Council finds that the 2013 Nexus Study contains a basis for a determination that the fees meet the requirements that apply to ad hoc exactions; and

WHEREAS, the City Council finds that there is a mechanism for individual developers to seek a determination that a particular project is entitled to a variance from the requirement to pay the relevant fee, through an administrative procedure; and

WHEREAS, according to the 2013 Nexus Study, a considerable portion of working San Diegans are homeless or at risk of homelessness; and

WHEREAS, the City Council previously adopted an ordinance that amended the fees and made other changes to the Municipal Code related to Housing Impact Fees (Ordinance O-20333 (Dec. 24, 2013)) (2013 Ordinance) and key provisions of the 2013 Ordinance would have accomplished the following:

1. Increased the fees in a phased manner. The first increase was set to take effect on July 1, 2014 and would have returned the fees to the level at which they existed from the program’s establishment in 1990 through June 30, 1996 (prior to a 50 percent reduction that took place in July 1996). Second and third increases were set to take effect the following two years.

Full implementation of the increase would have occurred on July 1, 2016, at which time the rate would have equaled approximately 1.5 percent of 2013 construction costs. The degree of increase varied among development types but the resulting fees represented an increase of approximately 377 to 744 percent as compared to existing fees. The fees would have applied to each of the following development types: office, hotel, retail, research and development, manufacturing, and warehouses;

2. Made changes regarding an obligation for the rates to be revised annually in accordance with a construction cost index; specifically, to require that the party responsible for those revisions was the Chief Executive Officer of the San Diego Housing Commission (Housing Commission), who would be able to revise the rates without City Council action, and to update the name of the index to be used;

3. Established that the fee applicable to a project would be set at the time the developer's application for a building permit was deemed complete, unless otherwise required by law;

4. Revised the due date for payment of the fees to the date of final inspection or issuance of a certificate of occupancy;

5. Amended a definition to ensure that the fee could be used to benefit households that qualify as "extremely low income" households;

6. Amended the description of how the fees were to be calculated and who was responsible for certain interpretations that may be required in performing that calculation;

7. Made an amendment to acknowledge the California State Legislature's recent actions related to the abolishment of enterprise zones;

8. Clarified that a developer could seek waivers, adjustments, and reductions to the fee in addition to variances. Amended the procedure for obtaining relief from the fee to make the Commission's decision appealable to Council, specified the information that an applicant could supply to assist the decision-makers in determining whether to grant relief, stated the finding that must be made to grant a complete waiver, and otherwise clarified issues related to procedure for variances, waivers, or adjustments of the fee; and

9. Corrected internal references to ensure consistency and made other edits for clarification; and

WHEREAS, the 2013 Ordinance was subject to a successful referendum effort and the City Council adopted an ordinance that repealed the 2013 Ordinance (Ordinance O-20359 (Apr. 3, 2014)); and

WHEREAS, at the hearing at which it considered the repeal, the City Council expressed an interest in bringing interested parties together to come to an agreement that would address the 2013 Ordinance opponents' objections and, in that spirit, the City Council directed the Housing Commission to continue dialogue and negotiations with an organization called the "Jobs Coalition" that had opposed the 2013 Legislation and to report to the City Council's Smart Growth and Land Use (SG&LU) Committee within three months with a compromise proposal (See Minutes for Regular Council Meeting of Tuesday, March 4, 2014, Item S500); and

WHEREAS, representatives of the Housing Commission and Jobs Coalition met numerous times over the next several months in an effort to come to a compromise concerning the Housing Impact Fee and related matters; and

WHEREAS, on July 17, 2014, the SG&LU Committee considered an item entitled “Proposed Workforce Housing Plan (Housing Impact Fee Municipal Code Amendments and Related Matters)”; and

WHEREAS, on that date, representatives of the Housing Commission reported on the status of the negotiations and the Housing Commission reported that the Jobs Coalition and the Housing Commission had come to an agreement concerning the Housing Impact Fee Ordinance and related matters; and

WHEREAS, the agreement between the Housing Commission and the Coalition was memorialized in a Memorandum of Understanding (MOU); and

WHEREAS, on July 17, 2014 and September 24, 2014, the SG&LU Committee received public testimony on and considered the matter, resulting in the item being forwarded to the full City Council for discussion without a recommendation; and

WHEREAS, on October 6, 2014, the City Council considered the matter, at which time Councilmember Cole offered a compromise proposal and representatives of the Housing Commission and Jobs Coalition testified in support of that proposal; and

WHEREAS, adoption of an ordinance consistent with the terms of that proposal would accomplish the following:

1. Raise housing impact fees by 100 percent (to the level at which they existed prior to being reduced by 50 percent in 1996). This increase would apply to the development type categories of office, hotel, and retail. The increase would begin January 1, 2015 and would be phased in over a period of three years;
2. Maintain existing housing impact fee rates for the research and development category;

3. Provide exemptions such that manufacturing, warehouse, and non-profit hospital categories would not be required to pay any housing impact fee;

4. Repeal the Municipal Code section that requires annual recommendations regarding adjustments to the housing impact fee in accordance with a construction index; and

5. The amendments would not be made subject to a “sunset provision”; and

WHEREAS, on October 6, 2014, the City Council requested that the Housing Commission bring forward legislation for its consideration that is consistent with the terms described by Councilmember Cole and that is designed to address objections to the repealed 2013 Ordinance, requesting that such legislation be presented to them for consideration by October 21, 2014 (*See* Resolution R-309252 (Oct. 6, 2014)); and

WHEREAS, this ordinance is consistent with the terms of that proposal; and

WHEREAS, this ordinance’s maintenance of existing rates for the research and development category and provision of exemptions for manufacturing, warehouse, and non-profit hospital uses is based on the City’s desire to encourage economic development and attract and retain quality jobs in these non-residential sectors and is in consideration of the public benefits such development provides, as further described in the Housing Commission’s Report to City Council No. CCR14-005; and

WHEREAS, this ordinance differs from the 2013 Ordinance in a manner that the City Council considers substantial; specifically, whereas opponents of the 2013 Ordinance objected to the degree of increase and the automatic annual adjustment provision (as evidenced by the objections in the Statement of Reasons accompanying the referendum petition), this ordinance increases the fees by a far lesser degree, only applies the increase to three of the development categories (while wholly or partially exempting three other categories from fee requirements),

and amends the Municipal Code to remove any reference to a requirement for annual automatic adjustments; and

WHEREAS, the City Council's actions over the months following the repeal of the 2013 Ordinance, culminating in the consideration of this ordinance, demonstrate a good faith effort to understand the objections of those who opposed the 2013 Ordinance and to take measures that address those objections in a meaningful manner; 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 98.0601, 98.0608, and Appendix A and deleting section 98.0619, to read as follows:

§98.0601 Purpose

It is the policy of The City of San Diego that new non-residential development in the categories of office, retail, research and development, and hotel development pay a fair share of the costs of subsidy necessary to house the low and very low income employees who will occupy the jobs new to the region related to such development.

§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 (4) [No change in text.]
- (5) Any development project which has received a vested right to proceed without payment of Housing Impact Fee pursuant to State Law; or
- (6) Nonresidential uses located in the Southeast/Barrio Logan Enterprise Zone described in City Council Resolution R-262864 (April 8, 1985); or
- (7) Any construction which is for any general government purposes; or
- (8) Non-profit hospital uses, which shall mean hospital uses that demonstrate and maintain Internal Revenue Code section 501(c)(3) status; or
- (9) Manufacturing uses; or
- (10) Warehouse uses.

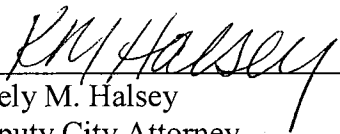
Appendix A of Division 6

TYPE OF USE	FEE/BUILDING SQUARE FEET		
	Through December 31, 2015	January 1, 2016 through December 31, 2016	On and After January 1, 2017
Office	\$1.41	\$1.76	\$2.12
Hotel	\$0.85	\$1.06	\$1.28
Research and Development	\$0.80	\$0.80	\$0.80
Retail	\$0.85	\$1.06	\$1.28

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 or January 1, 2015, whichever is later.


APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Keely M. Halsey
Deputy City Attorney

KMH:als
10/16/2014
Or.Dept:SDHC
Doc. 866946_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 10 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk


KEVIN L. FAULCONER, Mayor

Approved: 11/24/14
(date)

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

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, 98.0608, AND APPENDIX A AND DELETING SECTION 98.0619, ALL RELATING TO HOUSING IMPACT FEES ON NONRESIDENTIAL DEVELOPMENT IN THE CITY OF SAN DIEGO.

§98.0601 Purpose

It is the policy of The City of San Diego that new non-residential development in the categories of 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 income employees who will occupy the jobs new to the region related to such development.

§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 (4) [No change in text.]

(5) Any development project which has received a vested right to proceed without payment of Housing Impact Fee pursuant to State Law; or

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

(7) Any construction which is for any general government purposes; or

(8) Non-profit hospital uses, which shall mean hospital uses that demonstrate and maintain Internal Revenue Code section 501(c)(3) status; or

(9) Manufacturing uses; or

(10) Warehouse uses.

§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**
(Added 4-16-1990 by O-17454 N.S.)
(Amended 7-8-1996 by O-18320 N.S.)

APPENDIX A (Sec. 98.0618)

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

Appendix A of Division 6

TYPE OF USE	FEE/BUILDING SQUARE FEET		
	<u>Through December 31, 2015</u>	<u>January 1, 2016 through December 31, 2016</u>	<u>On and After January 1, 2017</u>
Office	<u>\$1.41</u>	<u>\$1.76</u>	<u>\$2.12</u>
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Research and Development	<u>\$0.80</u>	<u>\$0.80</u>	<u>\$0.80</u>
Retail	<u>\$0.85</u>	<u>\$1.06</u>	<u>\$1.28</u>

KMH:als
 10/16/2014
 Or.Dept:SDHC
 Doc. No. 866985_3

Passed by the Council of The City of San Diego on NOV 10 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input 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 NOV 25 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

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

By Mary Fernandez, 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

OCT 21 2014

, and on

NOV 25 2014

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 Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20431