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(O-2016-73)

3/22

ORDINANCE NUMBER O- 20629 (NEW SERIES)

DATE OF FINAL PASSAGE APR 06 2016

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 8, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 98.0604, 98.0608, AND 98.0610, AND BY REPEALING SECTION 98.0609, RELATING TO HOUSING IMPACT FEES.

WHEREAS, in April 2014, following a successful referendum effort, the City Council repealed Ordinance No. O-20333 relating to Housing Impact Fees; and

WHEREAS, at the hearing to consider the repeal of Ordinance No. O-20333, the Council directed the Housing Commission to continue dialogue and negotiations with an organization called the Jobs Coalition to come to an agreement with respect to Housing Impact Fees; and

WHEREAS, the Housing Commission and the Jobs Coalition subsequently came to an agreement that was memorialized in a Memorandum of Understanding (MOU); and

WHEREAS, one of the provisions in the MOU called for City Council consideration of an ordinance to defer Housing Impact Fee collections until projects receive certificates of occupancy or final building inspections; 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, 98.0608, and 98.0610, to read as follows:

**§98.0604 Definitions**

The following definitions shall apply to this Division:

Addition shall mean adding gross square feet to an existing Nonresidential Development Project subject to this Division.

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.

Construction shall mean the building of a new Nonresidential Development Project subject to this Division.

Gross Square Feet shall mean the total of all square feet of floor area included within the surrounding walls of the Nonresidential Development Project as determined by the Mayor or his or her designee. This area does not include garages or carports.

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.

Interior Remodel shall mean a tenant improvement which results in a change in the type of use of the Nonresidential Development Project that increases the employee density of the project as determined by the Mayor or his or her designee.

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.

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.

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.

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.

**§98.0608 Application of the Housing Fee Requirement**

This Division shall apply to Nonresidential Development Projects that are proposing the construction, addition or interior remodeling of any Nonresidential Development Project. This Division shall apply to mixed or combined use projects if such projects propose the construction, addition or interior remodeling of nonresidential uses. Notwithstanding the foregoing, this Division shall not apply to projects which fall within one or more of the following categories:

- (a) Projects which are the subject of Development Agreements currently in effect with the City, or of Disposition Agreements, Owner Participation Agreements, or Memoranda of Understanding with the Redevelopment Agency of the City of San Diego, approved prior to May 16, 1990, where such agreements or memoranda (1) limit the application of fees in a manner which specifically precludes the fees which would otherwise be imposed by this Division, or (2) provides alternative means of addressing the project contribution to very low and low income housing need, which means are quantitatively comparative to the fees herein; or
- (b) Uses which qualify as Single Room Occupancy Development; or
- (c) Residential uses as set forth in the San Diego City Municipal Code; or

- (d) That portion of any development project located on property owned by the State of California, the United States of America or any of its agencies, with the exception of such property not used exclusively for state governmental or state educational purposes; or
- (e) Any development project which has received a vested right to proceed without payment of Housing Impact Fee pursuant to State law; or
- (f) Nonresidential uses located in the Southeast/Barrio Logan Enterprise Zone described in City Council Resolution R-262864 (April 8, 1985); or
- (g) Any construction which is for any general government purposes; or
- (h) Non-profit hospitals, which shall mean freestanding hospitals that demonstrate and maintain Internal Revenue Code section 501(c)(3) status where the sick or injured are given medical or surgical care; or
- (i) Manufacturing uses; or
- (j) Warehouse uses.

**§98.0610 Payment of Housing Impact Fee**

- (a) Except as provided elsewhere in this section, no Building Permit shall be issued for construction of, or interior remodel of, any Nonresidential Development Project subject to this Division unless and until the Housing Impact Fee provided for in this Division is paid to the City. The amount of the Housing Impact Fee shall be determined in accordance with the fee schedule set forth in Appendix A in effect upon the issuance of a Building Permit or payment of the Housing Impact Fee, whichever occurs later, as follows: Gross Square Feet Nonresidential 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 Housing Impact Fee 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 existing use of the building.

(b) Notwithstanding Section 98.0610(a), Building Permits may be issued if the City Manager defers payment of the Housing Impact Fee in accordance with all of the following:

- (1) Payment of Housing Impact Fees shall not be deferred unless and until a Fee Deferral Agreement is entered into to the satisfaction of the City Manager. The Fee Deferral Agreement shall be recorded against the applicable property in the Office of the San Diego County Recorder and shall constitute a lien for the payment of the Housing Impact Fee. The Fee Deferral Agreement shall be binding upon, and the benefits of the agreement shall inure to, the parties and all successors in interest to the Fee Deferral Agreement.
- (2) Payment of Housing Impact Fees shall only be deferred if the applicable administrative processing fee, as adopted by City Council resolution, is paid by the Building Permit applicant or landowner.
- (3) Payment of Housing Impact Fees may be deferred for a maximum period of two years from the effective date of a Fee Deferral Agreement, or until a final inspection is requested, whichever occurs earlier. A final inspection shall not occur, and where

applicable, no certificate of occupancy shall be issued, until the applicable Housing Impact Fee is paid.

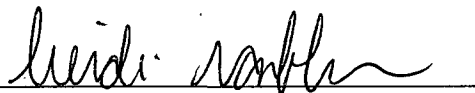
- (4) If payment of the Housing Impact Fees is deferred, the amount of the Housing Impact Fee due shall be determined in accordance with section 98.0610(a).

Section 2. That Chapter 9, Article 8, Division 6 of the San Diego Municipal Code is amended by repealing section 98.0609.

Section 3. 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 4. 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   
Heidi K. Vonblum  
Deputy City Attorney

HKV:nja  
07/21/15  
Or.Dept: Facilities & Financing  
Doc. No.: 1067408

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 22 2016.

ELIZABETH S. MALAND  
City Clerk

By 

Deputy City Clerk

Approved: \_\_\_\_\_

4/5/16  
(date)

  
KEVIN L. FAULCONER, Mayor

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 98.0604, 98.0608, AND 98.0610, AND BY REPEALING SECTION 98.0609, RELATING TO HOUSING IMPACT FEES.

**§98.0604 Definitions**

The following definitions shall apply to this Division:

- (a) Addition shall mean adding gross square feet to an existing ~~n~~Non-residential ~~d~~Development ~~p~~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.
- (c) Construction shall mean the building of a new ~~n~~Non-residential ~~d~~Development ~~p~~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 ~~n~~Non-residential ~~d~~Development ~~p~~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 ~~n~~Non-residential ~~d~~Development ~~p~~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.~~

**§98.0608 Application of the Housing Fee Requirement**

(a) This Division shall apply to ~~n~~Non-residential ~~d~~Development ~~p~~Projects that are proposing the construction, addition or interior remodeling of any ~~n~~Non-residential ~~d~~Development ~~p~~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~~a) Projects which are the subject of Development Agreements currently in effect with the City, or of Disposition Agreements, Owner Participation Agreements, or Memoranda of Understanding with the Redevelopment Agency of ~~T~~the City of San Diego, approved prior to ~~the effective date of this ordinance~~ May 16, 1990, where such agreements or memoranda (1) limit the application of fees in a manner which specifically precludes the fees which would otherwise be imposed by this Division, or (2) provides alternative means of addressing the project contribution to very low and low income housing need, which means are quantitatively comparative to the fees herein; or
- (~~2~~b) Uses which qualify as Single Room Occupancy Development; or
- (~~3~~c) Residential uses as set forth in the San Diego City Municipal Code; or
- (~~4~~d) That portion of any development project located on property owned by the State of California, the United States of America or

- any of its agencies, with the exception of such property not used exclusively for state governmental or state educational purposes; or
- (5e) Any development project which has received a vested right to proceed without payment of Housing Impact Fee pursuant to State Law; or
  - (6f) Nonresidential uses located in the Southeast/Barrio Logan Enterprise Zone described in City Council Resolution R-262864 (April 8, 1985); or
  - (7g) Any construction which is for any general government purposes; or
  - (8h) Non-profit hospitals uses, which shall mean freestanding hospitals uses that demonstrate and maintain Internal Revenue Code section 501(c)(3) status where the sick or injured are given medical or surgical care; or
  - (9i) Manufacturing uses; or
  - (10j) Warehouse uses.

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

- (a) 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 Housing

Impact fFee provided for in this Division is paid to the City. The amount of the Housing Impact fFee shall be ~~computed~~ determined in accordance with the fee schedule set forth in Appendix A in effect upon the issuance of a Building Permit or payment of the Housing Impact Fee, whichever occurs later, 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 Housing Impact fFees 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~~ existing use of the building.

(b) Notwithstanding Section 98.0610(a), Building Permits may be issued if the City Manager defers payment of the Housing Impact Fee in accordance with all of the following:

(1) Payment of Housing Impact Fees shall not be deferred unless and until a Fee Deferral Agreement is entered into to the satisfaction of the City Manager. The Fee Deferral Agreement shall be recorded against the applicable property in the Office of the San Diego County Recorder and shall constitute a lien for the payment of the Housing Impact Fee. The Fee Deferral Agreement shall be binding upon, and the benefits of the agreement shall inure to, the parties and all successors in interest to the Fee Deferral Agreement.

- (2) Payment of Housing Impact Fees shall only be deferred if the applicable administrative processing fee, as adopted by City Council resolution, is paid by the Building Permit applicant or landowner.
- (3) Payment of Housing Impact Fees may be deferred for a maximum period of two years from the effective date of a Fee Deferral Agreement, or until a final inspection is requested, whichever occurs earlier. A final inspection shall not occur, and where applicable, no certificate of occupancy shall be issued, until the applicable Housing Impact Fee is paid.
- (4) If payment of Housing Impact Fees is deferred, the amount of the Housing Impact Fee due shall be determined in accordance with section 98.0610(a).

HKV:nja  
07/21/15  
Or.Dept: Facilities & Financing  
Doc. No.: 951467\_3

Passed by the Council of The City of San Diego on MAR 28 2016, 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"/>
Lorie Zapf	<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"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input 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 APR 06 2016

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 [Signature], 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

MAR 08 2016, and on APR 06 2016

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 [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20629