



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 11, 2009 REPORT NO:
ATTENTION: Committee on Land Use and Housing
Agenda of June 27, 2009
SUBJECT: Ordinance Amending the Municipal Code Relating to Facilities Benefit
Assessments and Development Impact Fee Provisions

REQUESTED ACTION:

Recommend City Council approval of an Ordinance amending the section of the San Diego Municipal Code relating to the City's Facilities Benefit Assessment (FBA) and Development Impact Fee (DIF) Provisions.

STAFF RECOMMENDATION:

Recommend to the City Council adoption of the Amended FBA/DIF Ordinance.

SUMMARY:

This proposed ordinance amendment will allow deferral of FBA and DIF fees until building inspection. It will also provide for an automatic indexing of DIF fees at the start of each fiscal year.

ENVIRONMENTAL IMPACT:

This activity is exempt pursuant to CEQA Section 1560 (c).

DISCUSSION:

Approval of this ordinance will allow FBA and DIF fees to be deferred from the current building permit issuance until final inspection. The FBA fee deferral will be in effect two years from the date of ordinance approval. The DIF fee deferral will continue indefinitely. Affordable housing projects will be eligible for the FBA or DIF deferral indefinitely. This provision must be requested by the applicant and requires a fee deferral agreement which will cost an administrative fee of \$300 per application. There will be no deferral for the Regional Transportation Congestion Improvement Program (RTCIP) fees because deferrals are specifically not allowed in the SANDAG enabling ordinance.

Included in the proposed amendment is a provision for an automatic indexing of DIF on an annual basis. This proposed amendment will also make language changes necessary for consistency with the General Plan and includes a waiver/adjustment or reduction section for FBA and DIF.

FBA – The fee deferral will be in effect for two years from the date of Ordinance approval. The fee deferral will allow the applicant to pay the fees which are listed on the fee schedule at the time building permits were pulled unless subsequent fees are lower. If the building permits were pulled in FY 2009 but the inspection was not done until FY 2011, the fee due would be the 2011 fee listed in the FY 2009 financing plan even if subsequent updates to the financing plans resulted in increased FBA fees. This will give the developer certainty of the fees to be paid.

DIF – The fee deferral will continue indefinitely. The fees due at inspection will be the amount in effect at the time of permit issuance plus an adjustment made for the Los Angeles Construction Cost Index (LA CCI) as indicated in March of each year. There will be an automatic annual increase in DIF equal to the LA CCI as published in the Engineering News Record in March of any given year. This indexing will not be retroactive.

FISCAL CONSIDERATIONS:

A \$300 processing fee will be required for each fee deferral application. A nominal amount of interest will be lost due to the delayed payment of fees.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None.

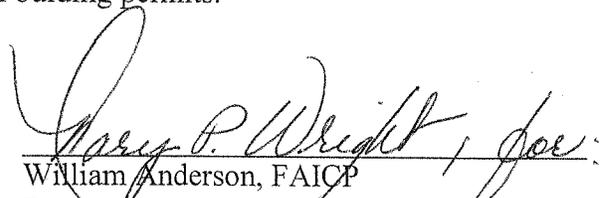
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The fee deferral has been requested by numerous parties including small and large scale project owners.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Any individual or entity requesting fee deferrals on building permits.


Charlene M. Gabriel
Facilities Financing Manager
City Planning & Community Investment


William Anderson, FAICP
Director
City Planning & Community Investment

Attachment: 1. Proposed Ordinance Strikeout/Underline

STRIKEOUT ORDINANCE

OLD LANGUAGE: STRIKEOUT
NEW LANGUAGE: UNDERLINE

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 1, DIVISION 22, BY AMENDING SECTIONS 62.2200 AND 61.2210; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6, BY AMENDING SECTION 142.0640 OF THE SAN DIEGO MUNICIPAL CODE, RELATING TO THE CITY'S FACILITIES BENEFIT ASSESSMENT (FBA) AND DEVELOPMENT IMPACT FEE (DIF) PROVISIONS.

§61.2200 Purpose

- (a) and (b) [No change in text.]
- (c) The purpose of this ordinance is to implement, in part, the ~~Progress Guide and General Plan Revision approved~~ adopted by Resolution No. ~~222918~~ 303473 of this City Council dated ~~February 26, 1979~~ on March 10, 2008, which established guidelines for future urban development in the eCity. These guidelines included the division of the City into two planning areas which, for reference purposes were designated ~~Urbanized, Planned Urbanizing and Future Urbanizing~~ designations, Proposition A Lands and Urbanized Lands.
- (d) ~~The Planned Urbanizing Area consists of newly developing communities, including but not necessarily limited to University, Tierrasanta, Rancho Bernardo, Penasquitos East, Mira Mesa, Scripps Ranch, South Bay Terraces, North City West, Otay Mesa East, Rancho Carmel, Sabre Springs and Miramar Ranch North.~~

The communities subject to Facilities Benefit Assessments (previously designated Planned Urbanizing Areas) are designated Urbanized Areas.

- (e) ~~The Progress Guide and General Plan Revision~~ referred to in this Division expresses a policy concerning the acquisition, construction and improvement of public facilities which states that certain public facilities ~~should~~ may be financed by special assessment proceedings, consideration from developers, the City's General Fund ~~or~~, including some combination thereof, as well as other appropriate funding mechanisms. This Division is intended to establish procedures for the implementation of that policy by providing for the designation of lands within the ~~Planned Urbanizing Area~~ Urbanized Lands which will receive special benefits from the acquisition, construction and improvement of certain public facilities set forth in this Division and the imposition of special assessments on land related to benefits received.

§61.2210 Payment of Facilities Benefits Assessments

(a) Regular Payment

After the adoption by the City Council of its Resolution of Designation, no building permits shall be issued for development on any land included within the Area of Benefit unless and until the Facilities Benefit Assessments established by the Resolution of Designation for such lands have been paid. The Facilities Benefit Assessment shall be paid by the landowner upon the issuance of building permit(s) for development or at such time as the Capital Improvement Program for the Area of Benefit in which the assessed land is located calls for the commencement of construction of the Public Facilities Project. In the event that a landowner

desires to proceed with development of a portion of the landowner's property, based on a phased development program, which is subject to a lien for the total amount of Facilities Benefit Assessments as provided in this Division, the landowner may obtain building permits for the development phase after paying a portion of the Facilities Benefit Assessments and making provision for payment of the remainder of the Facilities Benefit Assessments to the satisfaction of the City Manager. The Facilities Benefit Assessment due shall be the amount in effect upon the issuance of building permit(s) for development or the amount in effect at such time as the Capital Improvement Program for the Area of Benefit in which the assessed land is located calls for the commencement of construction of the Public Facilities Project. Money received by the City as payment of the Facilities Benefit Assessments shall be deposited in an interest earning special fund established for the Area of Benefit and shall thereafter be expended solely for the purposes for which it was assessed and levied. Upon payment of the Facilities Benefit Assessments as provided in this Division, the lien which attaches pursuant to Section 61.2209 shall be discharged. In the event ~~the~~ partial payment is made based on a phased construction program, the City shall only release ~~the~~ lots (as defined in San Diego Municipal Code section 113.0103) the portion of the property for on which all building permits have been issued for that development from the lien of the Facilities Benefit Assessment.

- (b) Deferral of Payment in Certain Circumstances

~~Payment on assessments may be deferred for developments located in Facility Benefit Assessment areas that have sufficient cash balances to fund existing programmed facilities for the next two fiscal years.~~

Until _____ [Note to Clerk: Please insert the date two years from the effective date of this ordinance] the City Manager is authorized to defer the collection of Facilities Benefit Assessments for a maximum period of two years or until request for Final Inspection, whichever is shorter, provided the City's Fee Deferral Agreement is properly executed and duly recorded and the applicable administrative fee is paid. The Facilities Benefit Assessments, including all annual inflationary rate increases, due under this subsection shall be as set forth the in fee schedule in the public facilities financing plan in effect when the Fee Deferral Agreement is executed by the City. The Final Inspection shall not be scheduled until the applicable Facilities Benefit Assessments are paid.

§142.0640 Payment of Facilities Benefit Assessments Fees and Development Impact Fees

- (a) The payment of Facilities Benefit Assessments Fees (as defined in paragraph (i) of Municipal Code Section 61.2202) shall be required before the issuance of any Building Permit in accordance with Municipal Code Section 61.2210.
- (b) The payment of Development Impact Fees (as defined in paragraph (b) of California Government Code Section 66000) shall be required before the issuance of any Building Permit in areas where ~~the City Council has~~

established Development Impact Fees have been established by the Resolution of the City Council. The Development Impact Fee due shall be as set forth in the most recent Resolution of the City Council and in the amount in effect upon the issuance of Building Permit, plus an automatic increase consistent with subsection (c) below.

(c) Unless otherwise specified in the applicable Resolution(s), the amount of the Development Impact Fee shall be increased, starting on July1, 2010, and on each July 1st thereafter, based on the one-year change (from March to March) in the Los Angeles Construction Cost Index as published monthly in the Engineering News Record. For reference purposes, this update is based on the March 2009, Los Angeles Construction Cost Index of 9799.19. Increases to Development Impact Fees consistent with the Construction Cost Index shall be automatic and shall not require further action of the City Council.

(d) Notwithstanding the above, the City Manager is authorized to defer the collection of Development Impact Fees (except those Development Impact Fees due pursuant to the City's Regional Transportation Congestion Improvement Program) for a maximum deferral period of two years or until request for Final Inspection, whichever is shorter, provided the City's Fee Deferral Agreement is properly executed and duly recorded and the applicable administrative fee is paid. The Development Impact Fees due under this subsection shall be the amount in effect when the Fee Deferral Agreement is executed by the City, plus an automatic increase consistent

with subsection (c) above. The Final Inspection shall not be scheduled until the applicable Development Impact Fees are paid.

(e) Notwithstanding paragraphs (a) and (b) above, a waiver, adjustment, or reduction of the Development Impact Fee due may be requested and decided in accordance with Process Five and shall require the findings in paragraph (f) be made. An application for a waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information the City Manager determines necessary to perform an independent evaluation of the applicant's rationale for the waiver, adjustment, or reduction and shall be a matter of public record.

(f) No waiver, adjustment, or reduction of the Development Impact Fees due shall be issued unless the City Council finds there is no reasonable relationship or nexus between the impact of the *development* and the amount of the Development Impact Fee.

JLG:cfq
06/11/09
Or.Dept:Fac.Financing
O-2009-159
mms#6285

DRAFT

