

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-20626 (NEW SERIES)

DATE OF FINAL PASSAGE APRIL 6, 2016

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 142.0640, RELATING TO DEVELOPMENT IMPACT FEES AND DEVELOPER REIMBURSEMENT AGREEMENTS USING DEVELOPMENT IMPACT FEE FUNDS.

§142.0640 ~~Payment of Development Impact Fees~~ for Financing Public Facilities

(a) Purpose

The purpose of this Section is to implement the City's General Plan which contains policies related to the maintenance of an effective facilities financing program to ensure the impact of new *development* is mitigated through appropriate fees. This Section applies to communities identified as "Facilities Benefit Assessment" communities and "Development Impact Fee" communities in the City's General Plan. Facilities Benefit Assessments and Development Impact Fees are collectively identified as Development Impact Fees. Nothing in this Section shall be construed to prohibit the City from imposing additional Development Impact Fees on a particular project.

(~~a~~b) Payment of Fees

The payment of Development Impact Fees (as defined in California

Government Code Section 66000) shall be required ~~before~~ prior to the issuance of any Building Permit in areas where Development Impact Fees have been established by City Council Resolution or ordinance of the City Council. ~~Notwithstanding the above, the City Manager may also~~ require the payment of Development Impact Fees prior to issuance of any construction permit issued or required for development that would increase demand for public facilities and/or result in the need for new public facilities. The Development Impact Fee due shall be determined in accordance with the fee schedule approved by the applicable City Council Resolution of the City Council in effect upon the issuance of a Building Permit, ~~or construction permit, as applicable,~~ and may include an automatic increase consistent with Section 142.0640(~~bc~~) below.

(~~bc~~) Automatic Annual Increases

For communities identified as Development Impact Fee communities in the General Plan, Unless otherwise specified in the applicable City Council Resolution(s) establishing the Development Impact Fees, the amount of the Development Impact Fee shall be increased, starting on July 1, 2010, and on each July 1st thereafter, based on the one-year change (from March to March) in the Construction Cost Index for Los Angeles as published monthly in the Engineering News-Record. Such Increases to Development Impact Fees consistent with the Construction Cost Index in Los Angeles shall be automatic and shall not require further action of the City Council. ~~This Subsection shall not be applicable to Development~~

~~Impact Fees in communities that are also subject to Chapter 6, Article 1, Division 22. For communities identified as Facilities Benefit Assessment communities in the General Plan, the Development Impact Fee shall be the amount identified in the applicable fee schedule adopted by City Council resolution.~~

(ed) Fee Deferral

Notwithstanding Section 142.0640(ab), Building Permits or construction permits, as applicable, may be issued if the City Manager defers payment of the Development Impact Fees in accordance with this Subsection.

Development Impact Fees due pursuant to the City's Regional Transportation Congestion Improvement Program shall not be deferred under any circumstance.

- (1) [No change in text.]
- (2) Payment of Development 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 Development 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 parties to the Fee Deferral Agreement.

- (3) Payment of Development Impact Fees shall only be deferred if the applicable administrative processing fee, as set forth in the ~~Comprehensive Fee Schedule on file in the Office of the City Clerk adopted by City Council resolution~~, is paid by the ~~applicant~~ applicant or landowner.
- (4) ~~At the end of the Development Impact Fee deferral period as set forth in Section 142.0640(e)(1)~~ If payment of the Development Impact Fee is deferred, the deferred Development Impact Fees due shall be determined in accordance with Section 142.0640(~~ab~~)-(c), except that, if the Development Impact Fee is paid prior to the end of the deferral period as set forth in Section 142.0640(d)(1), the amount of the Development Impact Fee shall be determined by the Development Impact Fee rate for the year in which the Development Impact Fee is actually paid as set forth in the Development Impact Fee schedule in effect when the Fee Deferral Agreement was executed by the City, or a subsequently-approved Development Impact Fee schedule, whichever schedule is lower, plus an automatic increase consistent with Section 142.0640(~~bc~~) if applicable, ~~or the fee schedule approved by the City Council for a subsequent update or amendment of the applicable public facilities financing plan, whichever fee schedule is lower.~~ If the Development Impact Fee is not timely paid as provided for in the Fee Deferral Agreement, the amount of the Development Impact

Fee shall be determined in accordance with the Development Impact Fee schedule in effect when the Development Impact Fee is actually paid, or the schedule in effect at the end of the deferral period as set forth in Section 142.0640(d)(1), plus automatic increases consistent with Section 142.0640(c), whichever amount is greater.

(de) Waiver, Adjustment, or Reduction of Fees

Any party on whom Development Impact Fees are imposed, may file an application for a waiver, adjustment, or reduction of the Development Impact Fees with the City Manager in accordance with this Subsection.

Nothing in this Subsection shall affect the requirements set forth in Section 142.0640(ab). The procedures provided in this Subsection are additional to any other procedure authorized by law for protesting or challenging Development Impact Fees.

(1) [No change in text.]

(2) An application for a waiver, adjustment, or reduction of Development Impact Fees shall only be processed after the applicable fee or amount of deposit, as ~~set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk~~ adopted by City Council resolution, has been paid in full. If a deposit is required, and the deposit as ~~shown in the Comprehensive Fee Schedule~~ adopted by City Council resolution is insufficient to cover the actual cost to the City to process the application, an

additional deposit, in an amount determined by the City Manager, shall be required. Any unused portion of a deposit shall be returned. If the City Council grants the application for a waiver, adjustment, or reduction of the Development Impact Fees, then the fee or the amount of the deposit expended shall be returned, minus a five hundred dollar processing fee equal to 10 percent of the refund amount up to a maximum of five hundred dollars. If the City Council grants the application for an adjustment or reduction of the Development Impact Fees, then a portion of the fee or amount of the deposit expended, determined by the percentage reduction in the Development Impact Fee imposed, shall be returned, minus a processing fee equal to 10 percent of the refund amount up to a maximum of five hundred dollars.

(3) through (7) [No change in text.]

(f) Developer Reimbursement Agreements

For purposes of this Division, a developer reimbursement agreement means an agreement to reimburse another entity for all or a portion of the cost of the entity's contracts with consultants and/or contractors for the design and construction of a public works project. The City Manager may enter into a written developer reimbursement agreement for a public works project that contains supplemental size, capacity, number, or length, or will serve communitywide needs, the need for which is not directly

attributable to the *development*, provided that the following minimum requirements are satisfied:

- (1) The source of reimbursement shall be limited to Development Impact Fee (as defined in Government Code section 66000) funds.
- (2) The public works project is identified in a City Council-adopted public facilities financing plan or impact fee study and the amount of reimbursement does not exceed the amount identified for the public works project in the adopted public facilities financing plan or impact fee study.
- (3) Any contract for expenses subject to reimbursement pursuant to a developer reimbursement agreement shall be awarded in accordance with the City Charter and San Diego Municipal Code Chapter 2, Article 2, Divisions 27, 30, 31, and 33 through 36. San Diego Municipal Code Chapter 2, Article 2, Division 32 shall not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement.
- (4) The amount of the developer reimbursement agreement shall not exceed \$30,000,000.

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