

ORDINANCE NUMBER O- 20626 (NEW SERIES)

DATE OF FINAL PASSAGE APR 06 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.

WHEREAS, in 1980, the City adopted the "Procedural Ordinance for Financing of Public Facilities in Planned Urbanizing Areas" (FBA Ordinance), which set forth a procedure to impose special assessments on lands within the planned urbanizing areas to finance public facilities; and

WHEREAS, in 2008, the City adopted a new General Plan, which explains that the planned urbanizing areas have been "largely completed" and that the City is now "a jurisdiction of primarily two tiers: Proposition A Lands (formerly the Future Urbanizing Areas) and the Urbanized Lands (formerly the Planned Urbanizing Areas and Urbanized Areas)"; and

WHEREAS, Ordinance No. O-20627, which was considered along with this Ordinance, repeals the FBA Ordinance; and

WHEREAS, City often enters into reimbursement agreements with private developers or other entities for reimbursement of all or a portion of the cost of the developer's contracts with consultants and contractors for the design and construction of public works projects, the need for which are not directly attributable to the private development; and

WHEREAS, a competitive process is required for all contracts awarded by the City, and this competitive process is required for contracts awarded by private parties for the design and construction of public works projects on behalf of the City; and

WHEREAS, for efficiency and economy of scale purposes, private developers often contract with the same consultants they use for the design, planning, and permitting of their

private projects as they use for public projects that will later be reimbursed by the City, and a separate competitive City process is not practical; and

WHEREAS, the City Council desires to expedite the process for the approval of reimbursement agreements with private entities so that needed public infrastructure can be constructed more quickly and efficiently; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 2, Division 6 of the San Diego Municipal Code is amended by amending section 142.0640, to read as follows:

§142.0640 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.

(b) Payment of Fees

The payment of Development Impact Fees (as defined in California

Government Code Section 66000) shall be required prior to issuance of any Building Permit in areas where Development Impact Fees have been established by City Council resolution or ordinance. 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 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(c).

(c) 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. 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.

(d) Fee Deferral

Notwithstanding Section 142.0640(b), 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 adopted by City Council resolution, is paid by the *applicant*.

- (4) If payment of the Development Impact Fee is deferred, the deferred Development Impact Fee due shall be determined in accordance with Section 142.0640(b)-(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(c) if applicable. 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.
- (e) 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(b). 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 adopted by City Council resolution, has been paid in full. If a deposit is required, and the deposit as 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.

(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:

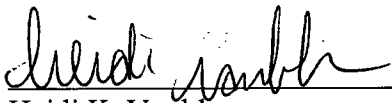
- (1) The source of reimbursement shall be limited to Development Impact Fee (as defined in Government Code section 66000) funds.
- (2) The public works project is identified in a City Council-adopted public facilities financing plan or impact fee study and the amount of reimbursement does not exceed 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.

Section 2. That adoption of this ordinance is contingent upon final passage of O- 20627 repealing the FBA Ordinance.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the 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, except that the provisions of this ordinance inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

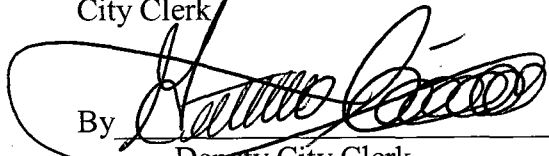
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Heidi K. Vonblum
Deputy City Attorney

HKV:nja
05/14/15
Or.Dept: Planning
Doc. No.: 1057842

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)

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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.

(ab) 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.

HKV:nja
05/14/15
Or.Dept: Planning
Doc. No.: 1057845

Passed by the Council of The City of San Diego on MAR 22 2016, 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"/>
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- 20626