

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Planning	DATE: 12/11/2015
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SUBJECT: San Diego Municipal Code and Council Policy Amendments Related to Facilities Benefit Assessments, Development Impact Fees, Housing Impact Fees, and Park Fees, and Procedures for Developer Reimbursement Agreements.

PRIMARY CONTACT (NAME, PHONE): Tom Tomlinson, 533-3187 MS 606F	SECONDARY CONTACT (NAME, PHONE): Scott Mercer, 533-3676 MS 606F
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): n/a

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
	ORIG DEPT.	Murphy, Jeff	12/29/2015
	CFO		
	DEPUTY CHIEF	Graham, David	01/19/2016
	COO		
	CITY ATTORNEY	Vonblum, Heidi	
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1) Introduce and adopt ordinances amending San Diego Municipal Code Chapter 6, Article 1; Chapter 9, Articles 6 and 8; Chapter 14, Article 2 relating to FBA, DIF, HIF, and Park fees, and Developer Reimbursement Agreements; 2) Adopt a resolution amending City Council Policies 300-07 and 100-07 relating to Consultant Services selection process for Developer Reimbursement Agreements; and 3) Adopt a Resolution adopting an administrative processing fees with respect to Housing Impact Fee Deferral Agreements as provided for in the ordinance.

STAFF RECOMMENDATIONS: Approve requested actions.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	Citywide
COMMUNITY AREA(S):	Citywide
ENVIRONMENTAL IMPACT:	This activity is not a project per CEQA Section 21065 and CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.
CITY CLERK INSTRUCTIONS:	

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 12/11/2015

ORIGINATING DEPARTMENT: Planning

SUBJECT: San Diego Municipal Code and Council Policy Amendments Related to Facilities Benefit Assessments, Development Impact Fees, Housing Impact Fees, and Park Fees, and Procedures for Developer Reimbursement Agreements.

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Tom Tomlinson/533-3187 MS 606F

DESCRIPTIVE SUMMARY OF ITEM:

San Diego Municipal Code and Council Policy Amendments Related to Facilities Benefit Assessments, Development Impact Fees, Housing Impact Fees, and Park Fees, and Procedures for Developer Reimbursement Agreements (Municipal Code Chapters 6, 9, 14; Council Policies 300-07 and 100-10). Approval of Resolution adopting administrative processing fees.

STAFF RECOMMENDATION:

Approve requested actions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: The proposed San Diego Municipal Code (SDMC) amendments are part of the Planning Department's Facilities Financing program to collect Facilities Benefit Assessments (FBA), Development Impact Fees (DIF) and Housing Impact Fees (HIF). The proposed amendments (attached in ~~strikeout~~ and clean versions) are intended to streamline regulations and eliminate redundancies and outdated references. The amendments are summarized in the attached Issue Matrix – Proposed SDMC Amendments FBA/DIF/HIF/Park fees. The salient revisions are as follows.

Amendments to Chapter 6 would repeal the FBA procedural ordinance and incorporates FBA into the DIF section of the SDMC. Removal of this provision will streamline approval of Public Facilities Financing Plans (PFFPs) in communities identified as "Facilities Benefit Assessment" communities in the City's General Plan by removing procedural requirements that are no longer needed, such as having a second City Council hearing, filing an Area of Benefit map and placing (and subsequently removing) liens on properties in the community that have not paid the FBA.

Amendments to Chapter 9 would allow the payment of the HIF to be deferred from building permit issuance to final inspection through the use of a Fee Deferral Agreement; and removes an outdated reference to a Park & Recreation facilities fee. The code revision implements one of the requested SDMC changes in the Workforce Housing MOU between the Housing Commission and the Jobs Coalition, and is based on the existing fee deferral program for FBA and DIF. The removal of the Park & Recreation facilities fee deletes an outdated reference to a fee that is now collected as part of the DIF.

Amendments to Chapter 14 incorporate the payment of FBA into the DIF Ordinance; and allows the City Manager to enter into certain Developer Reimbursement Agreements using developer impact fee funds in an amount up to \$30,000,000 for projects already identified in an adopted Public Facilities Financing Plan or Impact Fee Study. This amendment would streamline the

approval of Reimbursement Agreements by removing a City Council Committee hearing and a City Council hearing. Additionally, the amendments would allow consultant contracts that are entered into pursuant to a Developer Reimbursement Agreement to be exempt from the City's consultant selection procedures in SDMC Chapter 2, Article 2, Division 32. This amendment would allow developers to use their existing design consultants, and would also eliminate the need for a second City Council hearing to exempt a Developer Reimbursement Agreement from those requirements by ordinance.

Similar to the SDMC amendments, amendments to Council Policies 300-07 and 100-10 would exempt consultant contracts that are entered into pursuant to a Developer Reimbursement Agreement from the City's consultant services selection process. Allowing developers to use their existing consultants that are already engaged in the projects, or under contract, creates cost and time efficiencies as the consultants are already familiar with the projects and project area. Contracting out to others could delay project completion and cause redundant consultant work to be performed.

A \$500 processing fee will be required for each HIF fee deferral application. The fee is a cost recovery measure and is based on the time spent by staff processing the applications. Also included in the fee is the preparation and recording of a lien release once the fee deferral agreement has been satisfied by the applicant.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3: Invest in infrastructure.

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

FISCAL CONSIDERATIONS: It is anticipated that streamlining the update process for Public Facilities Financing Plans in communities identified as "Facilities Benefit Assessment" communities in the City's General Plan will accelerate plan completion, reduce City staff time, reduce the administrative costs of the update, which would ultimately reduce the amount of Development Impact Fees paid in those communities. Similarly, the streamlined Developer Reimbursement Agreement process will reduce staff time and therefore is anticipated to reduce CIP project costs, and result in reduced processing costs and the amount of development impact fees in all communities.

As part of the fee deferral program for the HIF, a \$500 processing fee is proposed for each fee deferral application. The fee is a cost recovery measure and is based on the time spent by staff to process the agreements. There may be some loss of interest revenue due to the delayed payment of the HIF between building permit issuance and final inspection.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): While this action would does not authorize entering into any contract or agreement, it would exempt those

consultant contracts entered into pursuant to a developer Reimbursement Agreement from Council Policy 100-07, Small and Local Business Preference for Goods, Services, and Consultant Contracts.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The SDMC amendments and Council Policy amendments were posted on the City's website. Presentations were made to NAIOP, December 2, 2015, Building Industry Association, December 8, 2015, Technical Advisory Committee, December 9, 2015, and the Chamber of Commerce, December 16, 2015.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The code amendments are intended to apply citywide. The amendments streamline the Public Facilities Financing Plan update process in communities identified as "Facilities Benefit Assessment" communities in the City's General Plan which positively impacts the residents and developers by providing more timely Public Facilities Financing Plan updates. The amendments streamline the developer reimbursement agreement process which also positively impacts residents by delivering community serving infrastructure more quickly and efficiently. The amendments will generate economic development opportunities for those applicants who are subject the HIF fee by aligning this project expense closer to the completion of the project.

Murphy, Jeff
Originating Department

Graham, David
Deputy Chief/Chief Operating Officer

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
1	Regulatory Reform	Chapter 6, Article 1, Division 22	<p><u>Eliminate Procedural Ordinance for Financing of Public Facilities in Planned Urbanizing Areas (Facilities Benefit Assessment Ordinance)</u> Repeal the Facilities Benefit Assessment (FBA) Procedural Ordinance and incorporate relevant provisions into Chapter 14, Article 2, Division 6 related to Development Impact Fees. This change will streamline the process for the adoption of Public Facilities Financing Plan Updates in communities identified as “Facilities Benefit Assessment” communities in the City’s General Plan by eliminating the requirement for a second Council hearing; filing of map designating an area of benefit; placing (and subsequently removing) liens on properties; and additional noticing requirements.</p>
2	Regulatory Reform	142.0640	<p><u>Impact Fees for Financing Public Facilities</u> Amend the code to incorporate the relevant provisions of the Facilities Benefit Assessment Ordinance into this section and make clarifications to the code. Amend the code section to allow the City Manager to enter into Developer Reimbursement Agreements, which currently requires Council approval, and allow developers to be exempt from the City’s procurement process for their consultant services contracts for Developer Reimbursement Agreements.</p>
3a	Regulatory Reform	98.0604 98.0608 98.0610	<p><u>Housing Impact Fee</u> Amend the code to allow the payment of Housing Impact Fees to be deferred from building permit issuance to final inspection through the use of a Fee Deferral Agreement. Amendment also includes miscellaneous edits and updated references.</p>
3b	Redundancy	98.0609	<p><u>Housing Impact Fee</u> Repeal the exemption provision in Section 98.0609 because Sections 98.0608 and 98.0618 identify those projects not subject to the Housing Fee Requirement. As such, Section 98.0609 becomes duplicative.</p>

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
4	Incorrect/ Outdated Reference	Chapter 9, Article 6, Division 4	<p><u>Fees Relating to Park & Recreational Facilities</u> Repeal this section of the code to remove outdated references to Park & Recreation Facilities Fees, which are no longer collected, because the City collects Development Impact Fees for Park facilities attributable to new development.</p>

SUBJECT: SMALL AND LOCAL BUSINESS PREFERENCE FOR GOODS,
SERVICES, AND CONSULTANT CONTRACTS

POLICY NO.: 100-10

EFFECTIVE DATE: [TBD]

BACKGROUND:

The City of San Diego expends millions of dollars annually in the procurement of goods, services, and consultants to meet the requirements of the various City departments. Historically, there has been a lack of diversity among City contracts. In particular, small and emerging local businesses have faced challenges competing against established businesses with greater resources and access to capital.

The City desires to provide contracting opportunities to a broader cross-section of the community in order to enhance diversity and increase competition. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination. The City also has a compelling interest in stimulating the local economy by providing opportunities for small and local businesses to grow, succeed, and create jobs for the citizens of San Diego.

The City Council has heard testimony from City staff and the community, considered statistical evidence, and reviewed programs in neighboring jurisdictions in an effort to identify a program best-suited to achieve these goals.

Based on this evidence, the City Council declares that a small and local business preference program would provide an effective, race and gender-neutral tool for achieving the City's goals of enhancing diversity in City contracts, ensuring open and fair competition, and promoting a robust local economy.

PURPOSE:

The purpose of this policy is to establish a small and local business preference program for goods, services, and consultant contracts. This program is intended to provide a race and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local firms so that all segments of the community will be able to participate in City contracts. This Council Policy does not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement as defined in San Diego Municipal Code Chapter 14, Article 2, Division 6.

The program is intended as a companion program to Chapter 2, Article 2, Division 36 of the San Diego Municipal Code relating to a Small and Local Business Program for Public Works Contracts.

DEFINITIONS:

Defined terms used in this Council Policy appear in italics. For purposes of this Council Policy:

Bidder shall have the same meaning as set forth in Municipal Code section 22.3003.

Consultant contract shall have the same meaning set forth in Municipal Code section 22.3003.

Contract for goods shall have the same meaning set forth in Municipal Code section 22. 3003.

Contract for services shall have the same meaning set forth in Municipal Code section 22. 3003.

Emerging Business Enterprise or *EBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Emerging Local Business Enterprise or *ELBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Job order contract shall have the same meaning set forth in Municipal Code section 22.3603.

Local Business Enterprise or *LBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Maintenance shall have the same meaning set forth in Municipal Code section 22.3003.

Principle place of business shall have the same meaning set forth in Municipal Code section 22.3603.

Public works contract shall have the same meaning set forth in Municipal Code section 22.3003.

Significant employee presence shall have the same meaning set forth in Municipal Code section 22.3603.

Small Business Enterprise or *SBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Small Local Business Enterprise or *SLBE* shall have the same meaning set forth in Municipal Code section 22.3603.

POLICY:

1. Goods and Services Contracts

All *contracts for goods* and *contracts for services* shall comply with the advertising, bidding, and award requirements set forth in Chapter 2, Article 2, Divisions 30 and 32, of the San Diego Municipal Code. In addition, for all *contracts for goods* and *contracts for services* in which the Purchasing Agent is required to advertise for sealed bids or proposals in the City's official newspaper, the City Manager shall:

- a. For bids, apply a discount of: (1) 5% off the bid price for *SLBE* or *ELBE* prime contractors; or (2) 5% off the bid price for prime contractors achieving the voluntary goal of 20% for *SLBE* or *ELBE* subcontractor participation set forth in subsection (c) of this Section 1. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *goods* or *services contract*. The discount shall be taken off the total contract value, including contract option years.
- b. For proposals, apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
 1. If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
 2. If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
 3. If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.
- c. Include a voluntary subcontractor participation requirement of 20% of the total bid price for *SLBEs* or *ELBEs*.

2. Consultant Contracts

All *consultant contracts* shall comply with the advertising, bidding, and award requirements set forth in Chapter 2, Article 2, Divisions 30 and 32, of the San Diego Municipal Code, Council Policy 300-7 (Consultant Services Selection), and Administrative Regulations 25.60 (Selection of Consultants for Work Requiring Licensed Architect and Engineering Skills) and 25.70 (Hiring

of Consultants Other Than Architects and Engineers), as applicable. In addition, the City Manager shall, for all *consultant contracts* valued at over \$50,000:

- a. Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
 1. If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
 2. If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
 3. If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.

3. Maintaining Participation Levels

- a. Bid discounts and additional points are based on the *bidder's* level of participation proposed prior to the award of the *goods, services, or consultant contract*. *Bidders* are required to achieve and maintain the *SLBE* or *ELBE* participation levels throughout the duration of the *goods, services, or consultant contract*.
- b. If the City modifies the original specifications, the *bidder* shall make reasonable efforts to maintain the *SLBE* or *ELBE* participation for which the bid discount or additional points were awarded. The City must approve in writing a reduction in *SLBE* or *ELBE* participation levels.
- c. The *bidder* shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated *SLBE* or *ELBE* subcontractor.
- d. *Bidder's* failure to maintain *SLBE* or *ELBE* participation levels as specified in the *goods, services, or consultant contract* shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
- e. The remedies available to the City under this Council Policy are cumulative to all other rights and remedies available to the City.

4. Commitment to Diversity

Invitations to Bid (ITB) and Requests for Proposals (RFP) for *goods, services, and consultant contracts* may require *bidders* to address their commitment to diversity. The Purchasing Agent, in consultation with Equal Opportunity Contracting, may develop ITB and RFP evaluation criteria, including point allocation, to carry out the intent of this section. *Bidders* may be required to address their commitment to diversity, this includes, but is not limited to, describing their diversity policies, outreach and recruitment efforts, past participation levels, community activities and other programs. However, nothing in this Council Policy shall be construed to permit the City to consider the *bidder's* race or gender, or that of its employees, in awarding a contract.

5. Bonding and Insurance

The Purchasing Agent, in consultation with Equal Opportunity Contracting, may on a contract-by-contract basis, adjust bonding and insurance requirements on *goods, services, and consultant contracts* to enhance opportunities for *SLBEs* and *ELBEs* to the extent permitted by law. The Purchasing Agent and Equal Opportunity Contracting shall consult with the Risk Management Department before making any such adjustment to ensure that the City is adequately protected against liability.

6. Audit and Reporting Requirements

The City shall periodically conduct audits of the Small and Local Business Program for *goods, services, and consultant contracts*. The City Manager shall report annually to the City Council on the impact and costs of implementing the Small and Local Business Preference for *goods, services, and consultant contracts*.

7. City Manager to Adopt Regulations

The City Manager shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Policy.

HISTORY:

[History]

SUBJECT: SMALL AND LOCAL BUSINESS PREFERENCE FOR GOODS,
SERVICES, AND CONSULTANT CONTRACTS

POLICY NO.: 100-10

EFFECTIVE DATE: ~~October 26, 2015~~ [TBD]

BACKGROUND:

The City of San Diego expends millions of dollars annually in the procurement of goods, services, and consultants to meet the requirements of the various City departments. Historically, there has been a lack of diversity among City contracts. In particular, small and emerging local businesses have faced challenges competing against established businesses with greater resources and access to capital.

The City desires to provide contracting opportunities to a broader cross-section of the community in order to enhance diversity and increase competition. In addition, the City has a compelling interest in ensuring that it is neither an active nor passive participant in marketplace discrimination. The City also has a compelling interest in stimulating the local economy by providing opportunities for small and local businesses to grow, succeed, and create jobs for the citizens of San Diego.

The City Council has heard testimony from City staff and the community, considered statistical evidence, and reviewed programs in neighboring jurisdictions in an effort to identify a program best-suited to achieve these goals.

Based on this evidence, the City Council declares that a small and local business preference program would provide an effective, race and gender-neutral tool for achieving the City's goals of enhancing diversity in City contracts, ensuring open and fair competition, and promoting a robust local economy.

PURPOSE:

The purpose of this policy is to establish a small and local business preference program for goods, services, and consultant contracts. This program is intended to provide a race and gender-neutral tool to expand opportunities for, and develop the capacity of, small and local firms so that all segments of the community will be able to participate in City contracts. This Council Policy does not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement as defined in San Diego Municipal Code Chapter 14, Article 2, Division 6.

The program is intended as a companion program to Chapter 2, Article 2, Division 36 of the San Diego Municipal Code relating to a Small and Local Business Program for Public Works Contracts.

DEFINITIONS:

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Maintenance shall have the same meaning set forth in Municipal Code section 22.3003.

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Public works contract shall have the same meaning set forth in Municipal Code section 22.3003.

Significant employee presence shall have the same meaning set forth in Municipal Code section 22.3603.

Small Business Enterprise or *SBE* shall have the same meaning set forth in Municipal Code section 22.3603.

Small Local Business Enterprise or *SLBE* shall have the same meaning set forth in Municipal Code section 22.3603.

POLICY:

1. Goods and Services Contracts

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- a. For bids, apply a discount of: (1) 5% off the bid price for *SLBE* or *ELBE* prime contractors; or (2) 5% off the bid price for prime contractors achieving the voluntary goal of 20% for *SLBE* or *ELBE* subcontractor participation set forth in subsection (c) of this Section 1. The discount will not apply if an award to the discounted *bidder* would result in a total contract cost of \$50,000 in excess of the low, non-discounted bid. In the event of a tie bid between a discounted *bidder* and non-discounted *bidder*, the discounted *bidder* will be awarded the *goods* or *services contract*. The discount shall be taken off the total contract value, including contract option years.
- b. For proposals, apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
 1. If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
 2. If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
 3. If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.
- c. Include a voluntary subcontractor participation requirement of 20% of the total bid price for *SLBEs* or *ELBEs*.

2. Consultant Contracts

All *consultant contracts* shall comply with the advertising, bidding, and award requirements set forth in Chapter 2, Article 2, Divisions 30 and 32, of the San Diego Municipal Code, Council Policy 300-7 (Consultant Services Selection), and Administrative Regulations 25.60 (Selection of Consultants for Work Requiring Licensed Architect and Engineering Skills) and 25.70 (Hiring

of Consultants Other Than Architects and Engineers), as applicable. In addition, the City Manager shall, for all *consultant contracts* valued at over \$50,000:

- a. Apply a maximum of an additional 12% of the total possible evaluation points to the *bidder's* final score for *SLBE* or *ELBE* participation as follows:
 1. If the *bidder* achieves 20% participation, apply 5% of the total possible evaluation points to the *bidder's* score; or
 2. If the *bidder* achieves 25% participation, apply 10% of the total possible evaluation points to the *bidder's* score; or
 3. If the prime contractor is a *SLBE* or an *ELBE*, apply 12% of the total possible evaluation points to the *bidder's* score.

3. Maintaining Participation Levels

- a. Bid discounts and additional points are based on the *bidder's* level of participation proposed prior to the award of the *goods, services, or consultant contract*. *Bidders* are required to achieve and maintain the *SLBE* or *ELBE* participation levels throughout the duration of the *goods, services, or consultant contract*.
- b. If the City modifies the original specifications, the *bidder* shall make reasonable efforts to maintain the *SLBE* or *ELBE* participation for which the bid discount or additional points were awarded. The City must approve in writing a reduction in *SLBE* or *ELBE* participation levels.
- c. The *bidder* shall notify and obtain written approval from the City in advance of any reduction in subcontract scope, termination, or substitution for a designated *SLBE* or *ELBE* subcontractor.
- d. *Bidder's* failure to maintain *SLBE* or *ELBE* participation levels as specified in the *goods, services, or consultant contract* shall constitute a default and grounds for debarment under Chapter 2, Article 2, Division 8, of the San Diego Municipal Code.
- e. The remedies available to the City under this Council Policy are cumulative to all other rights and remedies available to the City.

4. Commitment to Diversity

Invitations to Bid (ITB) and Requests for Proposals (RFP) for *goods, services, and consultant contracts* may require *bidders* to address their commitment to diversity. The Purchasing Agent, in consultation with Equal Opportunity Contracting, may develop ITB and RFP evaluation criteria, including point allocation, to carry out the intent of this section. *Bidders* may be required to address their commitment to diversity, this includes, but is not limited to, describing their diversity policies, outreach and recruitment efforts, past participation levels, community activities and other programs. However, nothing in this Council Policy shall be construed to permit the City to consider the *bidder's* race or gender, or that of its employees, in awarding a contract.

5. Bonding and Insurance

The Purchasing Agent, in consultation with Equal Opportunity Contracting, may on a contract-by-contract basis, adjust bonding and insurance requirements on *goods, services, and consultant contracts* to enhance opportunities for *SLBEs* and *ELBEs* to the extent permitted by law. The Purchasing Agent and Equal Opportunity Contracting shall consult with the Risk Management Department before making any such adjustment to ensure that the City is adequately protected against liability.

6. Audit and Reporting Requirements

The City shall periodically conduct audits of the Small and Local Business Program for *goods, services, and consultant contracts*. The City Manager shall report annually to the City Council on the impact and costs of implementing the Small and Local Business Preference for *goods, services, and consultant contracts*.

7. City Manager to Adopt Regulations

The City Manager shall develop and implement administrative policies, rules, and regulations to carry out the intent of this Policy.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: CONSULTANT SERVICES SELECTION
POLICY NO.: 300-07
EFFECTIVE DATE: [TBD]

BACKGROUND:

The City requires services of a recurring nature or for a specific one-time project which cannot be routinely provided by City staff, either because of the expertise required or the ongoing work load. Consultants may be employed where City staff is unable to accommodate this requirement. The procedure to evaluate the need for and selection of consultants should be standardized to insure the product or service is of the highest quality in relation to available funding.

Consultant services may be performed by individuals licensed by the State of California (such as, Architects, Civil, Mechanical or Electrical Engineers, Engineering Geologists, etc.) or by individuals for which such licensing is not a requirement. Because of this variation, two separate procedures have been formulated for the selection and hiring of consultants.

PURPOSE:

To provide a uniform policy to evaluate the need for and process for selecting consultants. This Council Policy does not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement as defined in San Diego Municipal Code Chapter 14, Article 2, Division 6.

POLICY:

It is the policy of the City that selection of consultants made directly by the City be made from as broad a base of applicants as possible and the choice be based on demonstrated capabilities or specific expertise. The type and scope of the required service or product must be clearly defined by the City Manager to determine whether it can be most efficiently provided by City staff or by a consultant, and where a consultant is chosen, whether licensed or non-licensed services are necessary. A licensed consultant will be selected where the significant portion of the service or product requires such skills and will be chosen using a nomination process with a negotiated contract. In those cases where the significant portion of the service or product does not require licensed skills, the selection process must be open and competitive involving comparison of cost statements and work effort.

The following criteria shall be applied in the consultant selection process:

A. General Procedure for All Consultants:

1. The affected department shall outline its objectives and the extent of the services that are required. This will be delineated in the form of a written document to be presented to prospective consultants.
2. Notice of the intent to seek consulting services and requests for submission of qualification statements shall be published in the City's official newspaper for every service in excess of \$25,000.
3. A minimum of three qualified consultants should be considered for selection except in those cases where unique expertise is required and can be provided only by a limited number of available consultants.

In particular instances it may be desirable to use a "sole source" consultant. This decision must be based on circumstances where competition is not feasible and such selection must be adequately justified. Such justification must contain substantive reasons as to why only one firm was selected and must reference specific items such as time constraints, cost savings and unavailability of similar expertise.

A consultant for providing real estate appraisals may be selected from an authorized listing, approved by Council, of qualified consultants who have responded to an advertisement soliciting their services. The listing is to be approved by Council each three years or sooner if needed.

4. Consultants' presentations should be uniformly evaluated on a weighted basis of qualifications such as expertise, experience, understanding and approach to the problem, financial responsibility, capability of personnel and subcontractors on the project, conformity with the City's Affirmative Action Program and the ability to complete the project within the required time frame and budget.

References submitted by consultant shall be contacted. All evaluation and selection records shall be maintained as permanent project records.

5. The consultant shall not perform any work prior to approval by the City Council of a contract to perform the work. The City shall not be liable for any work performed prior to such Council approval.

B. Procedure for Consultants Performing Work Requiring Professional Licensing:

1. The consultant contract shall be negotiated with the highest qualified person or firm at a compensation determined to be fair and reasonable to the City. The fee structure determined will take into consideration the estimated value of services, the scope, complexity and need for professional expertise and judgment. Should it not be possible to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations would be terminated and subsequently undertaken with the next most qualified person or firm.

C. Procedure for Consultants Performing Work Which Does Not Require Professional Licensing:

1. The contract shall be awarded to the highest qualified consultant using a selection criteria which will include comparison of cost statements and work effort. The fee to be paid consultants shall be considered but shall not be the sole basis for selection.
2. Where the services required are of a recurring nature but of a type that can be described with precision, pre-qualification of consultants may be utilized as the initial phase of the selection process. Each consultant on a pre-qualified list for a particular type of service will then be invited to submit a competitive proposal whenever such services are needed.

This selection method is most applicable to work that is concerned primarily with the application of established technical procedures where minimal professional judgement is involved.

AUTHORIZATION:

Once the selection of the consultant has been made by the responsible department and where Council approval is required, the following information shall be presented to the Council. It should be presented in the form of a report at the time authorization to execute the agreement is being considered.

1. Identification of project by complete title;
2. Justification for use of consultant services, including whether licensed or non-licensed services are necessary;
3. Date(s) and medium of advertisement for consultant services and project title used in advertisement;
4. Number of consultants responding for consideration in the selection process;
5. Method used in selection of consultants;
6. Basis for selection of consultants;
7. Name of prime consultant, description of responsibilities, and dollar amount of prime-contract award; and
8. For consultant contracts, the name(s) of all sub-consultant(s), description of duties of sub-consultant(s), and dollar amount(s) of sub-consultant(s) fee, or percent of prime-consultant fee awarded to sub-consultant(s).

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

HISTORY:

Adopted by Resolution R-210194 03/21/1974
Amended by Resolution R-212530 01/30/1975
Amended by Resolution R-215714 04/07/1976
Amended by Resolution R-218315 05/04/1977
Amended by Resolution R-222061 10/17/1978
Amended by Resolution R-222924 02/27/1979
Amended by Resolution R-266263 07/21/1986
Amended by Resolution R-299566 08/10/2004

DRAFT

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: CONSULTANT SERVICES SELECTION
POLICY NO.: 300-07
EFFECTIVE DATE: [TBD]

BACKGROUND:

The City requires services of a recurring nature or for a specific one-time project which cannot be routinely provided by City staff, either because of the expertise required or the ongoing work load. Consultants may be employed where City staff is unable to accommodate this requirement. The procedure to evaluate the need for and selection of consultants should be standardized to insure the product or service is of the highest quality in relation to available funding.

Consultant services may be performed by individuals licensed by the State of California (such as, Architects, Civil, Mechanical or Electrical Engineers, Engineering Geologists, etc.) or by individuals for which such licensing is not a requirement. Because of this variation, two separate procedures have been formulated for the selection and hiring of consultants.

PURPOSE:

To provide a uniform policy to evaluate the need for and process for selecting consultants. This Council Policy does not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement as defined in San Diego Municipal Code Chapter 14, Article 2, Division 6.

POLICY:

It is the policy of the City that selection of consultants made directly by the City be made from as broad a base of applicants as possible and the choice be based on demonstrated capabilities or specific expertise. The type and scope of the required service or product must be clearly defined by the City Manager to determine whether it can be most efficiently provided by City staff or by a consultant, and where a consultant is chosen, whether licensed or non-licensed services are necessary. A licensed consultant will be selected where the significant portion of the service or product requires such skills and will be chosen using a nomination process with a negotiated contract. In those cases where the significant portion of the service or product does not require licensed skills, the selection process must be open and competitive involving comparison of cost statements and work effort.

The following criteria shall be applied in the consultant selection process:

A. General Procedure for All Consultants:

1. The affected department shall outline its objectives and the extent of the services that are required. This will be delineated in the form of a written document to be presented to prospective consultants.
2. Notice of the intent to seek consulting services and requests for submission of qualification statements shall be published in the City's official newspaper for every service in excess of \$25,000.
3. A minimum of three qualified consultants should be considered for selection except in those cases where unique expertise is required and can be provided only by a limited number of available consultants.

In particular instances it may be desirable to use a "sole source" consultant. This decision must be based on circumstances where competition is not feasible and such selection must be adequately justified. Such justification must contain substantive reasons as to why only one firm was selected and must reference specific items such as time constraints, cost savings and unavailability of similar expertise.

A consultant for providing real estate appraisals may be selected from an authorized listing, approved by Council, of qualified consultants who have responded to an advertisement soliciting their services. The listing is to be approved by Council each three years or sooner if needed.

4. Consultants' presentations should be uniformly evaluated on a weighted basis of qualifications such as expertise, experience, understanding and approach to the problem, financial responsibility, capability of personnel and subcontractors on the project, conformity with the City's Affirmative Action Program and the ability to complete the project within the required time frame and budget.

References submitted by consultant shall be contacted. All evaluation and selection records shall be maintained as permanent project records.

5. The consultant shall not perform any work prior to approval by the City Council of a contract to perform the work. The City shall not be liable for any work performed prior to such Council approval.

B. Procedure for Consultants Performing Work Requiring Professional Licensing:

1. The consultant contract shall be negotiated with the highest qualified person or firm at a compensation determined to be fair and reasonable to the City. The fee structure determined will take into consideration the estimated value of services, the scope, complexity and need for professional expertise and judgment. Should it not be possible to negotiate a satisfactory contract with the firm considered to be most qualified, negotiations would be terminated and subsequently undertaken with the next most qualified person or firm.

C. Procedure for Consultants Performing Work Which Does Not Require Professional Licensing:

1. The contract shall be awarded to the highest qualified consultant using a selection criteria which will include comparison of cost statements and work effort. The fee to be paid consultants shall be considered but shall not be the sole basis for selection.
2. Where the services required are of a recurring nature but of a type that can be described with precision, pre-qualification of consultants may be utilized as the initial phase of the selection process. Each consultant on a pre-qualified list for a particular type of service will then be invited to submit a competitive proposal whenever such services are needed.

This selection method is most applicable to work that is concerned primarily with the application of established technical procedures where minimal professional judgement is involved.

AUTHORIZATION:

Once the selection of the consultant has been made by the responsible department and where Council approval is required, the following information shall be presented to the Council. It should be presented in the form of a report at the time authorization to execute the agreement is being considered.

1. Identification of project by complete title;
2. Justification for use of consultant services, including whether licensed or non-licensed services are necessary;
3. Date(s) and medium of advertisement for consultant services and project title used in advertisement;
4. Number of consultants responding for consideration in the selection process;
5. Method used in selection of consultants;
6. Basis for selection of consultants;
7. Name of prime consultant, description of responsibilities, and dollar amount of prime-contract award; and
8. For consultant contracts, the name(s) of all sub-consultant(s), description of duties of sub-consultant(s), and dollar amount(s) of sub-consultant(s) fee, or percent of prime-consultant fee awarded to sub-consultant(s).

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

HISTORY:

Adopted by Resolution R-210194 03/21/1974
Amended by Resolution R-212530 01/30/1975
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Amended by Resolution R-222924 02/27/1979
Amended by Resolution R-266263 07/21/1986
Amended by Resolution R-299566 08/10/2004

DRAFT

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1 OF
THE SAN DIEGO MUNICIPAL CODE BY REPEALING
DIVISION 22, RELATING TO FACILITIES BENEFIT
ASSESSMENTS AND DEVELOPMENT IMPACT FEES.

WHEREAS, under the City’s 1979 General Plan, the City was divided into three “tiers” of growth: (1) “urbanized,” which consisted of established and developed neighborhoods and the Downtown core; (2) “planned urbanizing,” which consisted of newly planned and developing communities; and (3) “future urbanizing,” which were largely vacant areas requiring a shift to “planned urbanizing” before being developed; and

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, the FBA Ordinance has since been amended to only require payment of a Facilities Benefit Assessment as a condition of property development, and is thus not subject to Proposition 218, but is subject to the Mitigation Fee Act and other constitutional limitations; and

WHEREAS, there is no legal distinction between a Facilities Benefit Assessment and a Development Impact Fee; and

WHEREAS, the FBA Ordinance currently mandates additional procedural requirements including an additional hearing to adopt a “Resolution of Intention,” protest procedures, filing of

a map of an Area of Benefit with the City Clerk, recording a Notice of Assessment with the County Recorder, and filing release of liens with the County Recorder, which are not otherwise legally required; and

WHEREAS, City desires to improve government efficiency by removing these extra procedural requirements; and

WHEREAS, absent these locally imposed procedural requirements, existing state law and the United States and California Constitutions impose sufficient procedural requirements;

NOW, THEREFORE,

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

Section 1. That Chapter 6, Article 1 of the San Diego Municipal Code is amended by repealing Division 22.

Section 4. That the amounts of any Facilities Benefit Assessments adopted by City Council resolution prior to the effective date of this Ordinance shall be the amount of Development Impact Fees required to be paid in accordance with San Diego Municipal Code section 142.0640.

Section 5. That the City Manager is authorized and directed to release all Facilities Benefit Assessment liens that are attached to land.

Section 6. That adoption of this ordinance is contingent upon final passage of O-
_____.

Section 7. 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 8. 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
05/14/15
Or.Dept: Planning
Doc. No.: 1030273

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(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 6, ARTICLE 1 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING DIVISION 22, RELATING TO FACILITIES BENEFIT ASSESSMENTS AND DEVELOPMENT IMPACT FEES.

~~Article 1: Public Improvement and Assessment Proceedings~~

~~Division 22: Procedural Ordinance for Financing of Public Facilities in Planned Urbanizing Areas~~

§61.2200 Purpose

- (a) ~~The City of San Diego, pursuant to the home rule provisions of Article 11, Section 5, of the California Constitution, may make and enforce all ordinances and regulations with respect to municipal affairs.~~
- (b) ~~The City of San Diego, pursuant to Article 11, Section 7, of the California Constitution, may make and enforce all local ordinances not in conflict with general laws.~~
- (e) ~~The purpose of this ordinance is to implement, in part, the City's General Plan, which establishes guidelines for future urban development in the City, including the financing of public facilities.~~
- (d) ~~The communities identified as Facilities Benefit Assessment Planning Areas, and Future Urbanizing Areas Planning Areas that are phase shifted,~~

~~in the City's General Plan are subject to this Division, until such time as all FBA funds are collected and expended in each individual community.~~

- (e) ~~The City's General Plan contains policies to maintain an effective facilities financing program to ensure the impact of new development is mitigated through appropriate fees and to address current and future public facility needs through a diverse funding and management strategy, including special assessment proceedings for local facilities. This Division is intended to establish procedures in furtherance of the City's General Plan policies by designating lands which will receive special benefits from the acquisition, construction and improvement of certain public facilities, and imposing assessments on land related to the special benefits received.~~

§61.2201 Areas of Benefit Authorized

~~In order that the burdens of the cost of constructing public facilities may be borne by all of the lands benefited thereby, Areas of Benefit may be designated and Facilities Benefits Assessments, as defined in Section 61.2202, chargeable to and against such lands may be imposed in accordance with procedures set forth in this Division.~~

§61.2202 Definitions

~~The definitions set forth in this section apply to the following terms as used in this Division:~~

- (a) ~~“Advance” means amounts expended by the City or other governmental entity toward the cost of a Public Facilities Project within or for the~~

benefit of an Area of Benefit and for which the City shall be reimbursed from Facilities Benefit Assessments;

- (b) “Area(s) of Benefit” means lands which are designated as receiving special benefits from the construction, acquisition, and improvement of Public Facilities Project(s) as established by a Resolution of Designation adopted by the City Council pursuant to this Division;
- (c) “Construction Permit” has the same meaning as stated in Section 113.0103;
- (d) “Capital Improvement Program” means a plan for the implementation and financing of Public Facilities Projects including but not limited to a schedule for the commencement of construction, the estimated cost of construction and the payment of Facilities Benefit Assessments;
- (e) “Construction” means design, acquisition of property, administration of construction contracts, actual construction and incidental costs related thereto;
- (f) “Contribution” means amounts expended by the City or other governmental entity toward the cost of a Public Facilities Project in relation to the general benefit received by the City from construction of the Public Facilities Project;
- (g) “Costs” mean amounts spent or authorized to be spent in connection with the planning, financing, acquisition and development of a Public Facilities Project including, without limitation, the costs of land, construction, engineering, administration, and legal and financial consulting fees;

- (h) ~~“Development” means the division of land, grading or original construction of an improvement to real property, which division of land, grading, or construction is of the type normally associated with urban development as opposed to agricultural activity;~~
- (i) ~~“Facilities Benefit Assessment(s)” means the amounts collected under the terms of this Division to provide funds for Public Facilities Project(s) which will benefit designated Areas of Benefit;~~
- (j) ~~“Public Facilities Project” means any and all public improvements the need for which is directly or indirectly generated by development, including but not limited to the following:~~
 - (1) ~~Water mains, pipes, conduits, tunnels, hydrants, and other necessary works and appliances for providing water service.~~
 - (2) ~~Lines, conduits and other necessary works and appliances for providing electric power service.~~
 - (3) ~~Mains, pipes and other necessary works and appliances for providing gas service.~~
 - (4) ~~Poles, posts, wires, pipes, conduits, lamps and other necessary works and appliances for lighting purposes.~~
 - (5) ~~Sidewalks, crosswalks, steps, safety zones, platforms, seats, statuary, fountains, culverts, bridges, curbs, gutters, tunnels, subways or viaducts, parks and parkways, recreation areas, including all structures, buildings and other facilities necessary to~~

~~make parks and parkways and recreation areas useful for the purposes for which intended.~~

- ~~(6) Sanitary sewers or instrumentalities of sanitation, together with the necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, tunnels, channels or other appurtenances.~~
- ~~(7) Drains, tunnels, sewers, conduits, culverts and channels for drainage purposes; with necessary outlets, cesspools, manholes, catch basins, flush tanks, septic tanks, disposal plants, connecting sewers, ditches, drains, conduits, channels and appurtenances.~~
- ~~(8) Pipes, hydrants and appliances for fire protection.~~
- ~~(9) Breakwaters, levees, bulkheads, groins and walls of rock or other material to protect the streets, places, public ways and other property from overflow by water, or to prevent beach erosion or to promote accretion to beaches.~~
- ~~(10) Retaining walls, embankments, buildings and any other structures or facilities necessary or suitable in connection with any of the work mentioned in this section.~~
- ~~(11) Compaction of land, change of grade or contours, construction of caissons, retaining walls, drains and other structures suitable for the purpose of stabilizing land.~~
- ~~(12) Works, systems or facilities for the transportation of people, including rolling stock and other equipment appurtenant thereto.~~

- (13) ~~All other work auxiliary to that described in subparagraph (12) which may be required to carry out that work, including terminal and intermediate stations, structures, platforms or other facilities which may be necessary for the loading of people into and unloading of people from such transportation facilities.~~
- (14) ~~The grading or regrading, the paving or repaving, the planking or replanking, the macadamizing or remacadamizing, the graveling or regraveling and the oiling or reoiling of streets.~~
- (15) ~~Acquisition, construction, improvement and equipping of library buildings.~~
- (16) ~~Acquisition, construction, improvement and equipping of fire stations.~~
- (17) ~~Acquisition, construction, improvement and equipping of temporary and permanent school buildings.~~
- (18) ~~Acquisition, construction, improvement and equipping of police stations.~~
- (19) ~~Acquisition, construction and installation of traffic signs, signals, lights and lighting.~~
- (20) ~~Public works maintenance facilities.~~
- (21) ~~All other work auxiliary to any of the above which may be required to carry out that work including but not limited to the maintenance of Public Facilities Projects and administrative, engineering, architectural and legal work performed in connection~~

with establishing, implementing and monitoring Public Facilities Projects.

- (22) Acquisition of any and all property, easements and rights of way which may be required to carry out the purposes of the project.

§61.2203 Initiation of Proceedings

Upon the receipt of an application by a landowner or his designated agent, or on its own motion, the City Council may initiate proceedings for the designation of an Area of Benefit by adopting a resolution stating its intention to do so. The City Council shall refer the proposed Public Facilities Project to the City Manager and shall direct said City Manager with the assistance of city agencies and, where appropriate, interested landowners to make and file with the City Clerk a report in writing which shall contain:

- (a) (1) An implementation program for future development and/or
- (2) a financing plan with respect to the proposed Public Facilities Project.
- (b) A general description of the proposed Public Facilities Project.
- (c) An estimate of the total cost of the Public Facilities Project(s) based on the projected time for commencement and completion thereof in accordance with the Capital Improvement Program.
- (d) A Capital Improvement Program establishing a schedule for the timing of construction of the Public Facilities Project and the estimated costs therefor.

- (e) ~~A diagram showing the Area of Benefit to be designated and the boundaries and dimensions of the subdivision of land within the Area of Benefit.~~
- (f) ~~Preliminary information concerning the method pursuant to which the costs are proposed to be apportioned among the parcels within the Area of Benefit in proportion to the estimated benefits to be received by those parcels and a preliminary estimate of the amount of the Facilities Benefit Assessments which will be charged to each such parcel.~~
- (g) ~~The amount of the contribution or advance, if any, which the City or other public entity will make toward the total cost of the Public Facilities Project(s).~~

§61.2204 Resolution of Intention

~~Upon receipt of the Report described in Section 61.2203 the City Council may declare its intention to designate an Area of Benefit by adopting a Resolution of Intention which shall include the following:~~

- (a) ~~A definitive description of the specific Public Facilities Project, the cost of which is proposed to be charged to the properties located within the Area of Benefit;~~
- (b) ~~A Capital Improvement Program with respect to the Public Facilities Project(s);~~
- (c) ~~The proposed boundaries of the Area of Benefit;~~
- (d) ~~Information concerning the method by which the costs are proposed to be apportioned among the parcels within the Area of Benefit and an estimate~~

~~of the amount of the Facilities Benefit Assessments which will be charged to each such parcel;~~

- ~~(e) The basis and methodology by which automatic annual increases in the Facilities Benefit Assessment will be computed, assessed and levied, without the necessity for further proceeding pursuant to Section 61.2212 if, in the discretion of the City Council, such automatic annual increases are determined to be necessary.~~
- ~~(f) The amount of the contribution or advance, if any, which the City or other public entity will make toward the total cost; and~~
- ~~(g) The time and place at which the City Council will hold a hearing to consider designation of the Area of Benefit.~~

§61.2205 Notice of Hearing

~~Notice of hearing shall be provided by publication of the Resolution of Intention in a newspaper of general circulation at least two weeks before the date set for the hearing and by mailing copies of the Resolution of Intention to the owners of the properties located within the proposed Area of Benefit at the addresses shown on the last equalized assessment roll, or as otherwise known to the City Clerk; or by any other means which the City Council finds reasonably calculated to appraise affected landowners of the hearing.~~

§61.2206 Protests

~~At any time not later than the close of the public hearing, any owner of property within the proposed Area of Benefit may file a written protest against the Public Facilities Project proposed to be undertaken, or against the extent of the area to be~~

~~benefited by it, or against the Facilities Benefit Assessments proposed to be levied within the Area of Benefit or against any or all of the foregoing. The protest must be in writing, signed by the protester, and must contain a description of the property in which the signer is interested. The description must be sufficient to clearly identify the property. If the signer is not shown on the last equalized assessment roll as the owner of that property, the protest must contain or be accompanied by written evidence that the signer is the owner of the property. All such protests shall be delivered to the City Clerk, and no other protests or objections shall be considered. Any protest may be withdrawn by the owner's requesting the same, in writing, at any time prior to the conclusion of the public hearing.~~

§61.2207 Hearing

~~At the time and place established in the Resolution of Intention, the City Council shall hear and consider protests filed against the proposed Public Facilities Project, the extent of the Area of Benefit, the amount of the Facilities Benefit Assessments proposed to be levied within the Area of Benefit, or any or all of the foregoing. The hearing may be continued from time to time. If within the time when protests may be filed, there is filed with the City Clerk a written protest by the owners of more than one half of the area of the property proposed to be included within the Area of Benefit, and if sufficient protests are not withdrawn so as to reduce the area represented to less than one half, then the proposed proceedings shall be abandoned unless the protests are overruled by an affirmative vote of four fifths of the members of the City Council. The City~~

~~Council shall not overrule a majority protest unless it finds that the public health, safety or general welfare require that provision be made for the installation of the proposed Public Facilities Project(s). In the event a majority protest is not withdrawn or overruled, the City Council shall not, for one year from the filing of that written protest, commence or carry on any proceedings for the same Public Facilities Project under the provisions of this Division. If any majority protest which is not withdrawn or overruled is directed against only a portion of the Public Facilities Project, then all further proceedings under the provisions of this Division to construct that portion of the Public Facilities Project so protested against shall be barred for a period of one year; but the City Council shall not be barred from commencing new proceedings, not including any part of the Public Facilities Project so protested against. Nothing in this section shall prohibit the City Council within a one year period, from commencing and carrying on new proceedings for the construction of a portion of the Public Facilities Project so protested against if it finds, by the affirmative vote of four fifths of its members, that the owners of more than one half of the area of the property to be benefited are in favor of going forward with such portion of the Public Facilities Project.~~

§61.2208 Resolution of Designation

~~At the conclusion of the hearing, and provided there is no majority protest or a majority protest is overruled, the City Council may adopt a Resolution of Designation ordering designation of the Area of Benefit and the establishment of the amount of the Facilities Benefit Assessment against each parcel within the Area of Benefit. The resolution shall include the following:~~

- (a) ~~A definitive description of the Public Facilities Project(s), the cost of which is to be charged to the properties located within the Area of Benefit;~~
- (b) ~~A Capital Improvement Program with respect to the Public Facilities Project;~~
- (c) ~~The boundaries of the Area of Benefit;~~
- (d) ~~The method by which the costs are to be apportioned among the parcels within the Area of Benefit and the amount of the Facilities Benefit Assessments which will be charged to each such parcel;~~
- (e) ~~The basis and methodology by which automatic annual increases in the Facilities Benefit Assessment will be computed, assessed and levied, without the necessity for further proceeding pursuant to Section 61.2212, if, in the discretion of the City Council, such automatic annual increases are determined to be necessary.~~
- (f) ~~The amount of the contribution or advance, if any, which the City or other public entity will make toward the total cost.~~

§61.2209 Filing of Map and Recording of Notice of Assessment as Lien

- (a) ~~After the adoption by the City Council of a Resolution of Designation, the City Manager shall prepare a map of the boundaries of the Area of Benefit based on said Resolution and file same with the City Clerk. The map shall be labeled substantially as follows: (here insert name or number of Area of Benefit) Area of Benefit, City of San Diego, San Diego County, State of California. The map shall also contain legends reading substantially as follows:~~

(1) Filed in the office of the City Clerk day of _____, 19____.

City Clerk, City of San Diego

(2) ~~Facilities Benefit Assessments were levied by the City Council on the lots, pieces and parcels of land shown on this diagram. Said assessments were levied on (month) (day), 19____. Reference is made to the assessment roll recorded in the office of the City Clerk for the exact amount of each Facilities Benefit Assessment levied against each parcel of land shown on this diagram.~~

City Clerk, City of San Diego

(3) Filed on (month) (day), 19____, at in the office of the County Recorder of the County of San Diego, State of California.

~~County Recorder of County of San Diego~~

~~The clerk shall file a copy of the diagram referred to in this subparagraph in the office of the County Recorder of the County of San Diego upon payment of the filing fee.~~

(b) ~~After recording the assessment diagram in his office, the City Clerk shall execute and record a notice of assessment in the office of the County Recorder of San Diego. Such notice of assessment shall be in substantially the following form:~~

NOTICE OF ASSESSMENT

Pursuant to the requirements of Municipal Code Section _____ of San Diego, the City Clerk of the City of San Diego, State of California, hereby gives notice that a diagram and assessment were recorded in his office relating to the following described property:

(The real property in the Area of Benefit may be described by: (a) stating its exterior boundaries; (b) giving its description according to any official or recorded map or (c) referring to the diagram filed in accordance with paragraph (a) of this section and the book and page number in the office of the County Recorder of the filed plat or map.)

Notice is further given that upon the recording of this notice in the office of the County Recorder, the several Facilities Benefit Assessments assessed on the lots, pieces, and parcels shown on the filed diagram shall become a lien upon the lots or portions of lots assessed, respectively. Reference is made to the diagram and assessment roll recorded in the office of the City Clerk.

Dated: _____

City Clerk, City of San Diego

(e) From the date of the recording of the Notice of Assessment in accordance with the provisions of paragraph (b) of this section, all persons shall be deemed to have notice of the contents of such assessment. Immediately upon such recording in the office of the County Recorder each of the assessments shall be a lien upon the property against which it is made.

- (d) In its discretion, and for good cause shown, the City Council may, upon terms and conditions prescribed by the City Council in its Resolution of Designation or thereafter, allow the lien of the facilities Benefit Assessment to become junior and subordinate to the lien of deed(s) of trust executed by landowners to secure loans to finance the construction of improvements on the property within the Area of Benefit.

§61.2210 Payment of Facilities Benefits Assessments

- (a) Payment

After the adoption by the City Council of a Resolution of Designation, the Facilities Benefit Assessment for the Area of Benefit shall be paid by the Construction Permit applicant or landowner prior to the issuance of any Construction Permit issued or required for development that would benefit from the Public Facilities Projects.

- (b) Partial Payment for Phased Development

In the event that a Construction Permit applicant or landowner desires to proceed with development of a portion of the 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 Construction Permit applicant or landowner may obtain Construction Permits for a particular development phase after paying a partial Facilities Benefit Assessment payment in an amount proportional to the amount of development occurring under that particular development phase to the satisfaction of the City Manager, plus the administrative processing fee, as

~~set forth in the Comprehensive Fee Schedule on file in the Office of the City Clerk. After a partial payment is made, the City Manager will release the existing Facilities Benefit Assessment lien in accordance with Section 61.2210(d), and shall record a new Facilities Benefit Assessment lien against the property with the revised Facilities Benefit Assessment amount.~~

~~(e) Payment Amount~~

~~The amount of Facilities Benefit Assessment due shall be determined by the City Manager by the actual type and size of the development permitted by the applicable Construction Permit, and by the applicable Facilities Benefit Assessment schedule in effect and on file in the Office of the City Clerk upon the issuance of Construction Permit(s).~~

~~(d) Use of Facilities Benefit Assessments~~

~~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.~~

~~(e) Release of Facilities Benefit Assessment Lien~~

~~Upon payment of Facilities Benefit Assessments as provided in this Division, the City Manager will release the lien which was attached to the land pursuant to Section 61.2209.~~

~~(f) Deferral of Facilities Benefit Assessment Payment in Certain Circumstances~~

~~Notwithstanding Section 61.2210(a), Construction Permits may be issued if the City Manager defers payment of the Facilities Benefit Assessments in accordance with this Section.~~

- ~~(1) Payment of Facilities Benefit Assessments 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 Facilities Benefit Assessments are paid.~~
- ~~(2) Payment of Facilities Benefit Assessments may 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, is paid by the Construction Permit applicant or landowner.~~
- ~~(3) Payment of Facilities Benefit Assessments may not be deferred unless and until a Fee Deferral Agreement is entered into with the Construction Permit applicant or landowner 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 Facilities Benefit Assessment. 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.~~

- (4) ~~At the end of the Facilities Benefit Assessment deferral period set forth in Section 61.2210(f)(1), the deferred Facilities Benefit Assessments due shall be determined in accordance with Section 61.2210(c), except that the Facilities Benefit Assessment shall be determined by the Facilities Benefit Assessment rate for the year in which the Facilities Benefit Assessment is actually paid as set forth in the Facilities Benefit Assessment fee schedule in effect when the Fee Deferral Agreement was executed by the City, or the Facilities Benefit Assessment fee schedule approved by the City Council for a subsequent update or amendment of the applicable public facilities financing plan, whichever is lower.~~

§61.2211 Recordation of Notice of Pendency of Sale or Foreclosure

~~Where there is a delinquency in payment of the Facilities Benefit Assessments as required by Section 61.2210, the City may initiate foreclosure proceedings in accordance with the procedures set forth in this Section and in any and all applicable state and local laws. If a sale or foreclosure is commenced, notice of the pendency of such sale or foreclosure shall be recorded with the County Recorder of San Diego County not later than 10 days after commencing an action or proceeding in any court to foreclose the lien of such assessment. The notice of pendency shall state that the City of San Diego has commenced a sale or foreclosure, as the case may be, and shall refer to and identify such sale or foreclosure and shall describe the property affected thereby. The City shall be entitled to recover the cost of recordation of any such notice of pendency in any~~

~~sale or foreclosure resulting from such delinquency and provision therefor shall be made in any notice, order or judgment authorizing or providing of such sale or foreclosure.~~

§61.2212 ~~Annual Adjustment of Facilities Benefit Assessments~~

~~The City Council may, annually after the adoption of the Resolution of Designation and subject to the requirements, set forth in Sections 61.2203 through 61.2209, cause an adjustment to be made in the Facilities Benefit Assessments established by the Resolution. The adjustments may reflect increases or decreases in the actual cost of the Public Facilities Project or if the Public Facilities Project has not yet been constructed then the estimated cost of the proposed capital improvements as reflected in changes in the scope of the Public Facilities Project or any other indices as the City Council may deem appropriate for this purpose. The modifications may also reflect changes in the improvements proposed to be constructed as well as the availability or lack thereof of other funds with which to construct the capital improvements.~~

§61.2213 ~~Consideration in Lieu of Assessment~~

~~The provisions of Section 61.2210 to the contrary notwithstanding, upon application by the landowner or his authorized agent, the City Council may accept consideration in lieu of the Facilities Benefit Assessments required pursuant to this Division, provided the City Council, upon recommendation of the City Manager, finds that the substitute consideration proposed: (1) has a value equal to or greater than such Facilities Benefit Assessments, (2) is in a form acceptable to the City Council and (3) is within the scope of the Public Facilities Project.~~

~~The City Council may accept consideration in lieu of the Facilities Benefit Assessments required pursuant to this Division where the City Council finds that the substitute consideration proposed is less than the value of such Facilities Benefit Assessment after payment of an amount equal to the difference between the value of the substitute consideration as determined by the City Council and the amount of such Facilities Benefit Assessments.~~

§61.2214 Termination of Area of Benefit

~~Upon the receipt of an application by a landowner or his designated agent, or on its own motion, the City Council may initiate proceedings for the termination of an Area of Benefit by adopting a resolution stating its intention. The Resolution of Intention shall state the time and place at which the City Council will hold a hearing to consider such termination. If, at the conclusion of such hearing, the City Council finds and determines that the Public Facilities Project for which the area was originally formed will not be required in the reasonably foreseeable future, or that the installation of said Public Facilities Project may be financed more effectively by another method, the City Council may adopt a resolution declaring the Area of Benefit terminated.~~

§61.2215 Reimbursement and Refund

- (a) ~~In the event of an annual adjustment of assessment as provided by Section 61.2212, which reduces the Facilities Benefit Assessment, amounts in the special fund which are no longer required shall be refunded to the current owner(s) of the property as shown on the last equalized assessment roll in proportion to the amount of the original payments.~~

- (b) ~~In the event the City Council agrees to accept consideration in lieu of Facilities Benefit Assessments as provided by Section 61.2213, the value of which the City Council finds is greater than the amount of the otherwise applicable Facilities Benefit Assessments, the Council may enter into an agreement with a developer pursuant to which said developer may be reimbursed for the amount of the otherwise applicable Facilities Benefit Assessments. The agreement shall set forth the amount to be reimbursed, and the time and manner in which payments shall be made only from revenues paid into the special fund created for the Area of Benefit.~~
- (c) ~~Upon termination of an Area of Benefit as provided by Section 61.2214, any money remaining in the special fund established in connection therewith shall be refunded to the current owner(s) of the property as shown on the last equalized assessment roll in proportion to the amount of the original payments.~~

§61.2216 Alternative Method

~~This Division is intended to establish an alternative method for the spreading of the costs of certain public improvements against the lands which will be benefited thereby; and the provisions of this Division shall not be construed to limit the power of the City Council to utilize any other method for accomplishing this purpose but shall be in addition to any other requirements which the City Council is authorized to impose as a condition to approving new development pursuant to state and local laws.~~

HKV:nja

05/14/15
Or.Dept: Planning
Doc. No.: 1012500_2

DRAFT

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.

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 _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

DRAFT

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 ~~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:

- (1a) 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 ~~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
- (2b) Uses which qualify as Single Room Occupancy Development; or
- (3c) Residential uses as set forth in the San Diego City Municipal Code; or
- (4d) 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

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 9, ARTICLE 6 OF
THE SAN DIEGO MUNICIPAL CODE BY REPEALING
DIVISION 4, RELATING TO PARK AND RECREATIONAL
FACILITIES FEES.

WHEREAS, the park and recreation facilities fees contained in Chapter 9, Article 6, Division 4 of the San Diego Municipal Code are no longer collected since the City collects Development Impact Fees for park facilities attributable to new development; NOW, THEREFORE,

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

Section 1. That Chapter 9, Article 6 of the San Diego Municipal Code is amended by repealing Division 4.

Section 2. That park and recreation fees previously collected prior to passage of this ordinance shall continue to be used in accordance with San Diego Ordinance O-17093.

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.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Heidi K. Vonblum
Deputy City Attorney

HKV:nja

10/20/15

Or.Dept: Facilities & Financing

Doc. No.: 1154239

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

DRAFT

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 6 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING DIVISION 4, RELATING TO PARK AND RECREATIONAL FACILITIES FEES.

~~Article 6: Refrigeration Code~~

~~Division 4: Miscellaneous Fees~~

~~Fees Relating to Park and Recreational Facilities~~

~~§96.0401 Statement of Policy~~

~~The Council hereby finds that in order to furnish adequate park and recreational facilities needed to serve development resulting from building construction within the City, it is necessary for the City to exercise the powers it has by virtue of being a home rule city and establish a procedure for the collection of fees incident to the issuance of building permits for the purpose of financing these facilities. It is the intent of this Article that the cost of the acquisition and improvement of park and recreational facilities required to serve new or replacement development be borne by the owners of such development.~~

~~§96.0402 Application~~

~~The provisions of this Division shall apply to all building permits issued which create dwelling units for human habitation or add to the number of such units in~~

~~any structure. The provisions of this Division shall not apply to a building permit issued for the purpose of reconstructing, repairing or replacing a building which has been or is hereafter damaged or destroyed by fire, explosion, act of God, or act of the public enemy, provided the number of dwelling units on the lot or parcel is not increased by the reconstruction, repair or replacement to a number that exceeds the number of dwelling units that legally existed on the lot or parcel prior to the event that damaged or destroyed the building. The provisions of this paragraph shall apply to park fees which are required to be paid by this Division or any other section of this Code.~~

~~Fees prescribed herein are in addition to those required by Section 91.0107, Section 102.0805 and other sections of this Code.~~

§96.0403 Payment of Fees

~~Prior to the issuance of any building permit, the Building Official shall assure that fees are paid to the City for park and recreational facilities in accordance with the following schedule:~~

- ~~1. Construction of new single-family dwelling units, \$100.00 per including modular housing and mobile homes dwelling unit~~
- ~~2. Construction of new multi-family dwelling units, \$ 75.00 per dwelling unit~~

~~Fees collected shall be refunded to the individual making payment in event the building permit expires, within the meaning of Section 302(d) of the California Building Code. Requests for a refund of fees shall be in writing and shall set forth in full the facts showing that such permit has expired.~~

§96.0404 Use of Fees Collected

Fees collected pursuant to the provisions of this Article, together with any earned interest thereon, shall be deposited in a special fund with a separate revenue and expense account established for park and recreational purposes. Expenditures from said fund shall be made only for park and recreational facilities within areas from which they were collected. Expenditures may be for: (1) the City purchase of land and the construction of facilities, (2) the purchase of already constructed facilities from public agencies or private parties, (3) the rehabilitation of existing park or recreational facilities only when such rehabilitation would serve expanded needs or demographic changes at existing parks or provide new additional equipment allowing expanded use of the park or (4) to reimburse those who may have donated land and constructed improvements to the extent of the value of such land and improvements in excess of their proportionate responsibility.

§96.0405 Adoption of Park and Recreational Building Permit Fee Utilization Areas Map

The City Council does hereby adopt a map entitled “Park and Recreational Building Permit Fee Utilization Areas,” showing the areas within which building permit fees collected shall be allocated. This map will be superimposed on the existing Park Service Districts Map and shall be presented to the City Council annually for review and possible modification along with the Park Service Districts review.

§96.0406 Severability

If any section, sentence, clause or phrase of this Article or the application thereof to any person or circumstance is for any reason held invalid, the validity of the remainder of this Article or the application of such provisions to other persons or circumstances shall not be affected thereby.

HKV:nja
10/20/15
Or.Dept: Facilities & Financing
Doc. No.: 1154218

DRAFT

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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. _____, 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-
_____ 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 _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____

(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

DRAFT

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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.

(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