

Article 8: Housing

Division 6: Housing Impact Fees On Commercial Development

*(“Housing Impact Fees On Commercial Development”
added 4-16-1990 by O-17454 N.S.)*

§98.0601 Purpose

It is the policy of The City of San Diego that new non-residential development in the categories of office, retail, research and development, and hotel development pay a fair share of the costs of subsidy necessary to house the low and very low income employees who will occupy the jobs new to the region related to such development.
*(“Purpose” added 4-16-1990 by O-17454 N.S.)
(Amended 11-25-2014 by O-20431 N.S.; effective 1-1-2015.)*

§98.0602 Authority

This Division is adopted pursuant to the authority of the California Constitution Article XI, Section 7, and the Charter of The City of San Diego.
(“Authority” added 4-16-1990 by O-17454 N.S.)

§98.0603 Limitation

Unless otherwise expressed in the San Diego Municipal Code, the provisions of this Division are the exclusive procedures and rules relating to housing impact fees. In the event of conflict, these provisions shall prevail over any other provisions of the San Diego Municipal Code.
(“Limitation” added 4-16-1990 by O-17454 N.S.)

§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.

*(“Definitions” added 4-16-1990 by O-17454 N.S.)
(Amended 4-25-2011 by O-20038 N.S.; effective 5-25-2011.)
(Amended 4-6-2016 by O-20629 N.S.; effective 5-6-2016.)*

§98.0605 Creation of San Diego Housing Trust Fund Housing Impact Fee Subaccount

There is hereby established a Housing Impact Fee Subaccount in the San Diego Housing Trust Fund account established by Section 98.0504 of the San Diego Municipal Code. The City Auditor shall maintain the funds in this subaccount separate from other funds in the San Diego Housing Trust Fund Account. Any reports produced pursuant to Section 98.0513 of the San Diego Municipal Code shall include a separate statement of income and expenditures for this Housing Impact Fee Subaccount. Interest on funds in this subaccount shall be deposited in the subaccount.
(Amended 6-3-2003 by O-19190 N.S.)

§98.0606 Deposit of Fees in San Diego Housing Trust Fund

Fees collected pursuant to this Division shall be deposited at the time collected, or soon thereafter, in the San Diego Housing Trust Fund subaccount to be used for purposes stated in Section 98.0505. Such funds may be used to defray the cost of collection consistent with provisions of Section 98.0520.
(Amended 6-3-2003 by O-19190 N.S.)

§98.0607 Location of Units To Be Assisted With Impact Fees Subaccount Monies

Funds in the impact fee subaccount may be utilized to assist units located anywhere within the boundaries of the City of San Diego. If at any time the Housing Commission determines that, in consultation with the Mayor or his or her designee and Planning Department, that City boundaries and transportation facilities have changed such that the geographic nexus between the payors of funds pursuant to this Division and the housing units assisted has been substantially reduced, the Housing Commission shall develop and present to the City Council recommendations which establish maximum distances between assisted housing and development subject to this Division, divide the City into zones, or otherwise ensure a proper geographic nexus.

(“Location of Units To Be Assisted With Impact Fees Subaccount Monies” added 4-16-1990 by O-17454 N.S.)
(Amended 4-25-2011 by O-20038 N.S.; effective 5-25-2011.)

§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.
(“Application of The Housing Fee Requirement” added 4-16-1990 by O-17454 N.S.)
(Amended 11-25-2014 by O-20431 N.S.; effective 1-1-2015.)
(Amended 4-6-2016 by O-20629 N.S.; effective 5-6-2016.)

§98.0610 Payment of Housing Impact Fee

- (a) Except as provided elsewhere in this section, the applicable Housing Impact Fee shall be paid at the time required building permit fees are paid and no later than the first inspection of the Nonresidential Development Project performed by the City. The amount of the Housing Impact Fee shall be determined as follows, in accordance with the fee schedule set forth in Appendix A in effect on the date the project application is *deemed complete*. 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).
(“Housing Fee Requirement: Payment of Fee As A Condition of Issuance of A Building Permit” added 4-16-1990 by O-17454 N.S.)
(Amended 4-25-2011 by O-20038 N.S.; effective 5-25-2011.)
(Retitled from “Housing Fee Requirement: Payment of Fee As A Condition of Issuance of A Building Permit” to “Payment of Housing Impact Fee” and amended 4-6-2016 by O-20629 N.S.; effective 5-6-2016.)
(Amended 2-1-2021 by O-21288 N.S.; effective 3-3-2021.)

[Editors Note: Amendments as adopted by O-21288 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21288-SO.pdf]

§98.0611 Determination of Fee

The Mayor or his or her designee shall determine the amount of the fee, which shall be collected by the City Treasurer and deposited in accordance with Section 98.0605. The Mayor or his or her designee shall utilize the definitions as contained in the San Diego Municipal Code to relate the anticipated use of the non-residential development project to a category of use in APPENDIX A and a resulting fee per square foot, or to identify the use as exempt.
(“Determination of Fee” added 4-16-1990 by O-17454 N.S.)
(Amended 4-25-2011 by O-20038 N.S.; effective 5-25-2011.)

§98.0612 Land or Air Rights In Lieu of Fee

The Commission may permit an applicant for a building permit for a non-residential development project subject to this Division to dedicate air rights or land to the City in lieu of payment of the fee required by Section 98.0610. Such land or air rights shall be suitable for development of housing eligible for the San Diego Housing Trust Fund assistance as provided in Division 5, Chapter 9 of this Code. Such air rights or land shall be dedicated or irrevocably offered for dedication to the City. The fair market value of such land or air rights shall be equal to or greater than the amount of the fee which would have been required under Section 98.0610.
(“Land or Air Rights In Lieu of Fee” added 4-16-1990 by O-17454 N.S.)

§98.0613 Administration of Land or Air Right Dedication

An applicant for a building permit for any non-residential development project subject to this Division who elects to proceed under Section 98.0612 in lieu of payment of a fee under Section 98.0610 shall apply to the Commission for a Certificate of In Lieu Housing Impact Fee Payment. The application shall describe the proposed land or air rights to be dedicated, the factors which render the land or air rights suitable for use for San Diego Housing Trust Fund purposes, an independent appraisal of the fair market value of the property, and an irrevocable offer of dedication of such land or air rights or an equivalent document. The Commission shall conduct an evaluation of the application including a second appraisal if appropriate. Upon a determination by the Commission that the proposed dedication meets the requirements of Section 98.0612 above, the Commission may issue a Certification of In Lieu of Impact Fee Payment. On presentation, the Mayor or his or her designee shall accept such certificate as the required compliance with this Division.

(“Administration of Land or Air Right Dedication” added 4-16-1990 by O-17454 N.S.)

(Amended 4-25-2011 by O-20038 N.S.; effective 5-25-2011.)

§98.0614 Variances

A variance from the provisions of this Division may be granted to an applicant by the Commission. The applicant must file an application with the Commission for a variance any time after the determination of the Mayor or his or her designee pursuant to Section 98.0610, but prior to issuance of the building permit. Any hearing required by the provisions of this Division shall be governed by the provisions of this Code. The application for a variance shall include financial and other information that the Commission determines is necessary to perform an independent evaluation of the applicants’ rationale for the variance and shall be a matter of public record.

(“Variances” added 4-16-1990 by O-17454 N.S.)

(Amended 4-25-2011 by O-20038 N.S.; effective 5-25-2011.)

§98.0615 Standards For Variance

No variance shall be issued to an applicant unless:

- (a) Special circumstances, unique to that project justify the grant of the variance;
- (b) The project would not be feasible without the modification;
- (c) A specific and substantial financial hardship would occur if the variance were not granted; and

- (d) No alternative means of compliance are available which would be more effective in attaining the purposes of this section than the relief requested.
(“Standards For Variance” added 4-16-1990 by O-17454 N.S.)

§98.0616 Low Density Employment Uses Requiring Specialized Structures

In addition to variances granted pursuant to the provisions of Section 98.0615, a variance may also be granted by the Commission in the case of development projects which consist of construction built for and suitable solely for a specific use involving few or no employees. In the case of a variance granted pursuant to this section for a use which involves few employees, the variance may specify a reduced fee applicable to the project. Any variance granted under this section shall expire upon the conversion of the building to another use or upon the remodeling of the building to permit additional employees.

(“Low Density Employment Uses Requiring Specialized Structures” added 4-16-1990 by O-17454 N.S.)

§98.0617 Findings For Variance

In approving a variance, the Commission shall make findings pursuant to each of the standards defined in Section 98.0615 or, if applicable, Section 98.0616.

(“Findings For Variance” added 4-16-1990 by O-17454 N.S.)

§98.0618 Exemptions within an Enterprise Zone

The fee requirements in this Division shall not apply to Nonresidential Development Projects that satisfy all of the following requirements:

- (a) The physical facilities within which the Nonresidential Development Project will be conducted are entirely located within a California State-designated Enterprise Zone; and
- (b) The applicant for a Building Permit for a Nonresidential Development Project enters into a written Economic Development Agreement with the City whereby the applicant agrees to give first preference in hiring to City residents who reside within either the applicable Enterprise Zone or the San Diego Targeted Employment Area; and
- (c) The primary use of the Nonresidential Development Project is one of the following:

- (1) Heavy Manufacturing, as described in San Diego Municipal Code section 131.0112(a)(10)(A);
- (2) Light Manufacturing, as described in San Diego Municipal Code section 131.0112(a)(10)(B);
- (3) Wholesale Distribution, as described in San Diego Municipal Code section 131.0112(a)(9)(D);
- (4) Research and Development, as described in San Diego Municipal Code section 131.0112(a)(10)(D);
- (5) Urgent Care Facilities, as described in San Diego Municipal Code section 141.0624; or
- (6) Hospitals, intermediate care facilities, and nursing facilities.

(“Exemptions within an Enterprise Zone” added 4-25-2011 by O-20038 N.S.; effective 5-25-2011. Former Section 98.0618 “Revisions To Appendix” renumbered to Section 98.0619.)

Appendix A of Division 6

TYPE OF USE	FEE/BUILDING SQUARE FEET		
	Through December 31, 2015	January 1, 2016 through December 31, 2016	On and After January 1, 2017
Office	\$1.41	\$1.76	\$2.12
Hotel	\$0.85	\$1.06	\$1.28
Research and Development	\$0.80	\$0.80	\$0.80
Retail	\$0.85	\$1.06	\$1.28

(Amended 11-25-2014 by O-20431 N.S.; effective 1-1-2015.)