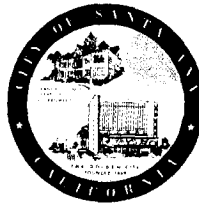


REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

JULY 16, 2012

TITLE:

**PUBLIC HEARING – ORDINANCE
TEMPORARILY DEFERRING COLLECTION
OF DEVELOPMENT IMPACT FEES**

A handwritten signature in black ink, appearing to read "Paul W. Davis".

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Adopt an ordinance amending various sections of the Santa Ana Municipal Code to temporarily defer collection of development fees until the issuance of certificates of occupancy/compliance.

DISCUSSION

Development activity in Orange County continues to experience the after-effects of the economic slow-down. Although there are clear indications that development activity in the City is increasing, it is anticipated to be a slow recovery.

Adopted originally in 2008, and again in 2011, the City Council approved a one-year development impact fee deferral program to help stimulate development. Programs similar to Santa Ana's were adopted by a number of cities in Orange County and more than 75 jurisdictions statewide. Santa Ana, like most cities, collects various fees to offset impacts created by new development. These impact fees provide funding for both new infrastructure and for improvements to existing infrastructure, including street circulation and park development.

Development impact fees can represent a sizable up-front cost, and in some cases be the deciding factor in the financial feasibility of a project. Allowing these fees to be deferred until the project is nearly complete provides a valuable incentive to both the developer and lender by reducing the time between the investment of money into a project and realizing a return on that investment in the form of sales or leasing of the building and/or units.

Allowing construction to commence with a deferment has the potential to benefit the City in a variety of ways including: (a) accelerating increases in property tax valuation due to assessment as improved land; (b) collection of sales tax on building materials purchased locally; (c) revenue from business license taxes from contractors and design professionals; and (d) employment of construction personnel and their spending in the local area.

Although the fee deferral program has not been utilized during its previous approval periods in 2009 and 2011, there are several sizable developments within the City that could benefit from this program if approved. Applicable projects include large residential developments like Lyon Homes, a 300-unit development and the Met at South Coast, a 271-unit development near Hutton Center and commercial projects such as the expansion of the Discovery Science Center and the One-Broadway Plaza office building.

A temporary one-year deferral program is recommended as a stimulus for both residential and non-residential development. To ensure that fees are paid prior to certificate of occupancy/compliance, provisions in the draft ordinance require a developer to execute a contract to pay the fees, with interest, prior to issuance of the certificate of occupancy/compliance. This contract will be recorded with the Orange County recorder and constitute a lien for the payment of the fees. Alternatively, the obligation will be secured by an irrevocable letter of credit from the developer. So as to avoid any fiscal impact to the City, the ordinance further provides that a developer will offset the City's costs to implement and administer the fee deferral program.

The ordinance will be in effect for one year, unless extended for one additional year by further action of the City Council.

FISCAL IMPACT

There is no fiscal impact associated with this action.



Jay M. Trevino
Executive Director
Planning & Building Agency

MF:rb
mfreports\Fee deferral RFCA_2012

ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA TO TEMPORARILY SUPERSEDE CERTAIN PROVISIONS OF THE SANTA ANA MUNICIPAL CODE AND TO PERMIT DEVELOPERS TO DEFER PAYMENT OF CERTAIN DEVELOPMENT IMPACT FEES

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The Mitigation Fee Act (Government Code section 66000, *et seq.*) authorizes the City to adopt and regulate monetary exactions for the purpose of defraying all or a portion of the public facility costs relating to a development project. The development impact fees are charged as a condition of approval and are used to alleviate the effects of development on the community by financing public improvements, services, or programs that bear a reasonable relationship to the development. Virtually all California cities, including Santa Ana, require applicants to pay mitigation fees as a precondition to issuing a building permit. The City may determine when such fees are to be paid.
- B. The City relies on new development to stimulate the local economy and to provide direct and indirect benefits to its residents and business by creating construction jobs, new market-rate and affordable housing, and new tax-base revenues for the City.
- C. This ordinance is intended to alleviate certain barriers to development, in light of the challenges facing the development industry in a fluctuating market economy, by allowing eligible project applicants to defer certain development impact fees.
- D. The Request for Council Action for this ordinance dated July 16, 2012, shall by this reference be incorporated herein, and together with this ordinance, any amendments or supplements and the oral testimony before the City Council at this meeting, shall additionally constitute the necessary findings for this ordinance.
- E. All provisions of the Santa Ana Municipal Code which are repeated herein are repeated solely in order to comply with the provisions of Section 418

of the City Charter. Any such restatement of existing provisions of the Code is not intended, nor shall it be interpreted, as constituting a new action or decision of the City Council, but rather such provisions are repeated for tracking purposes only in conformance with the Charter.

Section 2. Definitions. The following words and phrases are defined for purposes of this ordinance as follows:

“Applicant” means the owner or owners of record of the real property for which a fee deferral is sought pursuant to this ordinance.

“Code” means the Santa Ana Municipal Code.

“Executive Director” means the Executive Director of the Planning and Building Agency of the City.

“Eligible Applicant” means an Applicant meeting the Eligibility Criteria for deferral of impact fees.

“Eligibility Criteria” means an objective standard established by the Executive Director with concurrence of the City Manger, which may be amended from time to time as deemed necessary, used to determine appropriateness for incentives under this Chapter.

“Fee Deferral Agreement” means an agreement, including a deed of trust, by and between the Applicant and the City in a form acceptable to the City Attorney, which is a prerequisite requirement for approval for any fee deferral under this ordinance. The Fee Deferral Agreement shall include provision for the payment of the City’s reasonable costs in preparing.

“Nonresidential” means (a) those commercial business activities which are permitted or allowed in the C1, C2, C4, or C5, or in commercial CR, SP or SD zoning districts as set forth in Title 41 of this Code, or (b) those industrial business activities which are permitted or allowed in the M1 or M2 zoning districts as set forth in Chapter 41 of this Code.

“Subject Property” means the real property owned by the Applicant subject to the Fee Deferral Agreement.

“Residential” means those activities which are permitted or allowed in the RE, R1, R2, R3, R4, PD, or in residential CR, SP or SD zoning districts, as set forth in section 41-143 of this Code, and includes a live-work community as set forth in section 41-101.5 of the Code.

Section 3. Deferral of Development Impact Fees for Residential and Nonresidential projects.

A. Notwithstanding any other provisions of this Code, some or all of the development impact fees imposed on new Residential or Nonresidential buildings and structures located in the City may, upon application by an Eligible Applicant and approval of the Executive Director, be deferred subject to the provisions set forth below. Fees eligible to be deferred shall be:

- Parks Acquisition and Development Fee
- Drainage Area Master Plan Fee
- Transportation System Improvement Fee (TSIP)
- Major Thoroughfare and Bridge Fee (to the extent, if any, it is both collected and retained by the City)
- Fire Facilities Fee
- Sewer Connection Fee

B. Prior to the City's consideration of an application for deferral of impact fees, the Applicant shall provide to the Executive Director, at the Applicant's sole cost and expense, a current preliminary title report on the Subject Property.

C. No deferral shall be effective until the Applicant provides security to the City in the form of a Fee Deferral Agreement as set forth in section 4 of this ordinance, approved by the City Manager and in a form acceptable to the City Attorney.

D. The maximum deferral period shall be:

1. Prior to the final inspection or issuance of a temporary certificate of occupancy or final certificate of occupancy for the new building or structure on the Subject Property, whichever comes first, or
2. One (1) year from the date of issuance of the building permit for the Subject Property.

E. Notwithstanding any provision to the contrary, the deferred impact fees not paid at the time of building permit shall be subject to:

1. Interest on unpaid fees at the annual rate of interest which the City earns on its investment of pooled funds shall accrue from the date of issuance of the initial building permit until the deferred impact fees and all accrued interest is paid, and
2. An additional up-front charge shall be added to the unpaid amount to cover the administrative costs incurred in processing the fee deferral application and administering the fee deferral program.

Section 4. Form of Security for Unpaid Development Impact Fees.

A. As a condition of the deferral, the City shall require the property owner, or lessee if the lessee's interest is of record, to execute prior to and as a condition of issuance of a building permit, a Fee Deferral Agreement, which shall provide that the deferred development impact fees shall be paid within the time set forth in section 4.D. of this ordinance, and secured by an obligation that shall inure to the benefit of, and be enforceable by the City, evidenced by either:

1. a senior, unsubordinated recorded lien on the Subject Property which shall be enforced against successors in interest to the property owner or lessee, releasable when the obligation is paid in full, which shall in the case of a Residential project include requirement for an escrow instruction providing for payment out of escrow from sale proceeds of the deferred fees prior to disbursing proceeds to the seller, or, at the Applicant's option,

2. an irrevocable letter of credit from the Applicant in a form approved by the City Attorney, which shall be releasable when the obligation is paid in full.

B. The payment of such development impact fees shall be deemed a debt due and owing to the City at such time as set forth herein, which debt shall only be deemed satisfied and discharged upon payment in full to the City. The City may pursue collection through all available legal and administrative means including, but shall not be limited to, judicial or non-judicial foreclosure of the recorded lien against the Subject Property, a demand upon the irrevocable letter of credit, and/or civil judgment against the Applicant for breach of the Fee Deferral Agreement and/or the security provided hereunder.

Section 5. Applicability.

This ordinance and the incentives derived hereunder shall apply only to new development projects that have not obtained a building permit from the City at the time this ordinance is adopted by the City Council, or to new development projects that have agreed in writing to be bound by this ordinance prior to the time this ordinance is adopted by the City Council. This ordinance shall remain in effect for twelve (12) months from the adoption date, and as of that date is repealed unless a City Council adopts a further ordinance of resolution to extend that sunset date for an additional period not to exceed twelve (12) months.

Section 6. Ordinance to Operate Exclusively.

Except as set forth in this ordinance, all other provisions of the Code shall remain in full force and effect. Nothing contained in this ordinance is deemed to authorize or permit the deferral of payment of any fee or charge imposed upon Residential or Nonresidential

development in the City except for those development impact fees expressly set forth in section 2 above.

Section 7. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

ADOPTED this _____ day of _____, 2012.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: _____
Ryan O. Hodge
Assistant City Attorney

AYES: Councilmembers _____
NOES: Councilmembers _____
ABSTAIN: Councilmembers _____
NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXX to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana