ORDINANCE NUMBER O- 19893 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 11 2009

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 6, ARTICLE 1, DIVISION 22, BY AMENDING SECTIONS 62.2200 AND 61.2210; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6, BY AMENDING SECTION 142.0640 OF THE SAN DIEGO MUNICIPAL CODE, RELATING TO THE CITY'S FACILITIES BENEFIT ASSESSMENT [FBA] AND DEVELOPMENT IMPACT FEE [DIF] PROVISIONS.

WHEREAS, the intent of these regulations is to allow for the deferral of Facilities Benefit Assessments [FBAs] and Development Impact Fees [DIFs] under circumstances the City Council finds promote the health, safety and general welfare and stimulate the local economy; and

WHEREAS, the national, state, and local economy have negatively impacted the financial markets that provide construction lending; and

WHEREAS, the lack of construction lending has stalled many projects in the City of San Diego that have been applied for or permitted for construction; and

WHEREAS, the further intent of these regulations is codify the City's policies and procedures regarding the calculation of the FBAs and DIFs, including ratification of all prior and current Resolutions of the City Council establishing or setting DIFs; and

WHEREAS, the further intent of these regulations is allow for waiver, adjustment or reduction of DIFs where the City Council finds there is no

reasonable relationship or nexus between the impact of the development and the amount of the DIFs; NOW, THEREFORE,

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

Section 1. That Chapter 6, Article 1, Division 22, of the San Diego Municipal Code is amended by amending Sections 61.2200 and 61.2210, to read as follows:

§61.2200 Purpose

(a) and (b) [No change in text.]

(c) The purpose of this ordinance is to implement, in part, the General Plan adopted by Resolution No. 303473 on March 10, 2008, which established guidelines for future urban development in the City. These guidelines include the division of the City into two planning designations, Proposition A Lands and Urbanized Lands.

(d) The communities subject to Facilities Benefit Assessments (previously designated Planned Urbanizing Areas) are designated Urbanized Areas.

(e) The General Plan referred to in this Division expresses a policy concerning the acquisition, construction and improvement of public facilities which states that certain public facilities may be financed by special assessment proceedings, consideration from developers, the City's General Fund, including some combination thereof, as well as other appropriate funding mechanisms. This Division is intended to establish procedures for the implementation of that policy by providing for the designation of lands within the Urbanized Lands which will receive special benefits from the acquisition, construction and improvement of

certain public facilities set forth in this Division and the imposition of special assessments on land related to benefits received.

§61.2210 Payment of Facilities Benefit Assessments

(a) Regular Payment

After the adoption by the City Council of its Resolution of Designation, no building permits shall be issued for development on any land included within the Area of Benefit unless and until the Facilities Benefit Assessments established by the Resolution of Designation for such lands have been paid. The Facilities Benefit Assessment shall be paid by the landowner upon the issuance of building permit(s) for development or at such time as the Capital Improvement Program for the Area of Benefit in which the assessed land is located calls for the commencement of construction of the Public Facilities Project. In the event that a landowner desires to proceed with development of a portion of the landowner's 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 landowner may obtain building permits for the development phase after paying a portion of the Facilities Benefit Assessments and making provision for payment of the remainder of the Facilities Benefit Assessments to the satisfaction of the City Manager. The Facilities Benefit Assessment due shall be the amount in effect upon the issuance of building permit(s) for development or the amount in effect at such time as the Capital Improvement Program for the Area of Benefit in

which the assessed land is located calls for the commencement of construction of the Public Facilities Project. 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. Upon payment of the Facilities Benefit Assessments as provided in this Division, the lien which attaches pursuant to Section 61.2209 shall be discharged. In the event partial payment is made based on a phased construction program, the City shall only release *lots* (as defined in San Diego Municipal Code section 113.0103) on which all building permits have been issued for that development from the lien of the Facilities Benefit Assessment.

(b) Deferral of Payment in Certain Circumstances

(1) Payment on assessments may be deferred for developments located in Facility Benefit Assessment areas that have sufficient cash balances to fund existing programmed facilities for the next two fiscal years.

(2) Payment on assessments may be deferred for affordable housing units. For purposes of this subsection, affordable housing units means all units that meet the affordability requirements of the Inclusionary Ordinance codified in San Diego Municipal Code section 142.1309 by providing on-site units and moderate units consistent with the California Health and Safety Code section 50093.

(3) Until __ SEP 11, 2011 __ [Note to Clerk: Please insert the date two years from the effective date of this ordinance] the City Manager is authorized to enter into agreements to defer the collection of Facilities Benefit Assessments for a maximum deferral period of two years or until request for Final Inspection, whichever is shorter, provided the City's Fee Deferral Agreement is properly executed and duly recorded, and the applicable administrative fee is paid. The Facilities Benefit Assessments, including all annual inflationary rate increases, due under this subsection shall be as set forth in the fee schedule in effect when the Fee Deferral Agreement is executed by the City or the fees approved by the City Council for a subsequent update of the public facilities financing plan, whichever fee schedule is lower. The Final Inspection shall not be scheduled until the applicable Facilities Benefit Assessments are paid.

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

§142.0640 Payment of Facilities Benefit Assessments and Development Impact Fees

(a) The payment of Facilities Benefit Assessments (as defined in paragraph (i) of Municipal Code Section 61.2202) shall be required before the issuance of any Building Permit in accordance with Municipal Code Section 61.2210.

(b) The payment of Development Impact Fees (as defined in paragraph (b) of California Government Code Section 66000) shall be required before the issuance of any Building Permit in areas where Development Impact Fees

have been established by the Resolution of the City Council. The Development Impact Fee due shall be as set forth in the most recent Resolution of the City Council and in the amount in effect upon the issuance of Building Permit, plus an automatic increase consistent with subsection (c) below.

(c) Unless otherwise specified in the applicable Resolution(s), 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 Los Angeles Construction Cost Index as published monthly in the Engineering News Record. For reference purposes, this update is based on the March 2009, Los Angeles Construction Cost Index of 9799.19. Increases to Development Impact Fees consistent with the Construction Cost Index shall be automatic and shall not require further action of the City Council.

(d) Notwithstanding the above, the City Manager is authorized to defer the collection of Development Impact Fees (except those Development Impact Fees due pursuant to the City's Regional Transportation Congestion Improvement Program) for a maximum period of two years or until request for Final Inspection, whichever is shorter, provided the City's Fee Deferral Agreement is properly executed and duly recorded and the applicable administrative fee is paid. The Development Impact Fees due under this subsection shall be the amount in effect when the Fee Deferral Agreement is executed by the City, plus an automatic increase consistent

with subsection (c) above. The Final Inspection shall not be scheduled until the applicable Development Impact Fees are paid.

(e) Notwithstanding paragraphs (a) and (b) above, a waiver, adjustment, or reduction of the Development Impact Fee due may be requested and decided in accordance with Process Five and shall require the findings in paragraph (f) be made. An application for a waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information the City Manager determines necessary to perform an independent evaluation of the *applicant's* rationale for the waiver, adjustment, or reduction and shall be a matter of public record.

(f) No waiver, adjustment, or reduction of the Development Impact Fees due shall be issued unless the City Council finds there is no reasonable relationship or nexus between the impact of the *development* and the amount of the Development Impact Fee.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the sixtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Jana L. Garmo
Deputy City Attorney

JLG:hm
07/07/09(4)
07/22/09 Rev.Copy
Or.Dept:Fac.Financing
O-2009-159
MMS#6285

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 0 1 2009.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 9-11-09
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

O- 19893