

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



June 29, 2016

W9c

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: JOHN AINSWORTH, ACTING EXECUTIVE DIRECTOR

**SUBJECT: CITY OF SAN DIEGO DE MINIMIS LOCAL COASTAL PROGRAM
AMENDMENT No. LCP-6-SAN-16-0030-7 (Public Facilities Financing) FOR
COMMISSION REVIEW AT ITS MEETING OF July 13-15, 2016**

The Coastal Act was amended January 1, 1995 to provide for a more streamlined method to review amendments to local coastal programs. Section 30514(d) allows the Executive Director to make a determination that a proposed LCP amendment is de minimis in nature. The Executive Director must determine that the proposed amendment: 1) has no impact, either individually or cumulatively, on coastal resources; 2) is consistent with the policies of Chapter 3; and 3) does not propose any change in land use or water use or any change in the allowable use of property. Section 30514(d) requires the local government to notice the proposed de minimis LCP amendment 21 days prior to submitting it to the Executive Director either through: 1) publication in a newspaper of general circulation; 2) posting onsite and offsite the area affected by the amendment; or 3) direct mailing to owners of contiguous property. If the Executive Director makes the determination that the proposed amendment qualifies as a “de minimis” amendment and finds the public notice measures have been satisfied, such determination is then reported to the Commission for its concurrence.

PROPOSED AMENDMENT

On May 25, 2016, the City of San Diego’s LCP amendment request was filed in the San Diego Coast District office. The request was submitted as a separate de minimis LCP amendment and involves procedural changes to the City’s public facilities financing administration and management. While the City’s work involves multiple sections of the municipal code, for purposes of coastal review and the subject LCP amendment, the proposed amendment involves revisions to Chapter 14 of the City’s Land Development Code (LDC) which serves, in large part, as the City’s certified implementation plan. The proposed revisions are shown in ~~strikeout~~/underline in the attached Ordinance Number O-20626. The proposed amendment only affects the certified implementation plan and was properly noticed.

DISCUSSION

The proposed amendment reflects desired changes to the City of San Diego’s, specifically the Planning Department’s, Facilities Financing program for the imposition of development impact fees for the financing of public facilities. The proposed revisions

are intended to streamline regulations, and eliminate redundancies and outdated references. For purposes of coastal review, the key changes would authorize the Mayor/City Manager to enter into developer reimbursement agreements where: (1) the source of reimbursement is limited to development impact fee 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 identified amount therein; and (3) the amount of the reimbursement agreement does not exceed \$30M. Under the “strong mayor” form of governance set forth in the San Diego Charter, the Mayor is recognized as the Chief Executive Officer for the City responsible for signing all legal instruments and documents. The Municipal Code then specifies that all references to “City Manager” are deemed to refer to the “Mayor”.

The City enters into reimbursement agreements with developers or other entities to cover the design and construction costs of public works improvements that may not be directly attributable to the private development and it is hoped that utilizing the developers’ consultants results in cost and time savings. The purpose of these code revisions would be to streamline the reimbursement process and ensure the completion of needed public infrastructure more quickly. Ultimately, the City would also project some reductions in development impact fees with more efficient operations.

The proposed revision to the Land Development Code (IP) does not change the allowable uses of any coastal zone property, any land uses or the resource protection regulations of the City. The proposed amendment does not have any potential to impact, either individually or cumulatively, coastal resources. Therefore, the proposed amendment can be found consistent with Chapter 3 of the Coastal Act and be supported.

CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the de minimis LCP amendment, as submitted, would not result in any significant adverse environmental impacts under the meaning of the California Environmental Quality Act.

DETERMINATION

The Executive Director determines that the City of San Diego LCP amendment is de minimis. Based on the information submitted by the City, the proposed LCP amendment will have no impact, either individually or cumulatively, on coastal resources. It is consistent with the policies of Chapter 3 of the Coastal Act. The amendment does not propose any change in land use or any change in the allowable use of property. The City has properly noticed the proposed amendment. As such, the amendment is de minimis pursuant to Section 30514(d).

MOTION:

I move that the Commission concur with the Executive Director's determination that the LCP amendment, as submitted, is de minimis.

STAFF RECOMMENDATION:

The Executive Director recommends that the Commission **concur** in this determination. Unless three or more members of the Commission object to this determination, the amendment shall become effective and part of the certified LCP ten (10) days after the date of the Commission meeting.

W9C

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

City of San Diego
LCP-6-SAN-16-0030-7
(Public Facilities Financing)

Government Code Section 66000) shall be required ~~before~~ prior to the issuance of any Building Permit in areas where Development Impact Fees have been established by City Council Resolution or ordinance of the City Council. Notwithstanding the above, the City Manager may also require the payment of Development Impact Fees prior to issuance of any construction permit issued or required for development that would increase demand for public facilities and/or result in the need for new public facilities. The Development Impact Fee due shall be determined in accordance with the fee schedule approved by the applicable City Council Resolution of the City Council in effect upon the issuance of a Building Permit, or construction permit, as applicable, and may include an automatic increase consistent with Section 142.0640 (bc) below.

(bc) Automatic Annual Increases

For communities identified as Development Impact Fee communities in the General Plan, Unless otherwise specified in the applicable City Council Resolution(s) establishing the Development Impact Fees, the amount of the Development Impact Fee shall be increased, starting on July 1, 2010, and on each July 1st thereafter, based on the one-year change (from March to March) in the Construction Cost Index for Los Angeles as published monthly in the Engineering News-Record. Such increases to Development Impact Fees consistent with the Construction Cost Index in Los Angeles shall be automatic and shall not require further action of the City Council. This Subsection shall not be applicable to Development

~~Impact Fees in communities that are also subject to Chapter 6, Article 1, Division 22. For communities identified as Facilities Benefit Assessment communities in the General Plan, the Development Impact Fee shall be the amount identified in the applicable fee schedule adopted by City Council resolution.~~

(ed) Fee Deferral

Notwithstanding Section 142.0640(ab), Building Permits or construction permits, as applicable, may be issued if the City Manager defers payment of the Development Impact Fees in accordance with this Subsection.

Development Impact Fees due pursuant to the City's Regional Transportation Congestion Improvement Program shall not be deferred under any circumstance.

(1) [No change in text.]

(2) Payment of Development Impact Fees shall not be deferred unless and until a Fee Deferral Agreement is entered into to the satisfaction of the City Manager. The Fee Deferral Agreement shall be recorded against the applicable property in the Office of the San Diego County Recorder and shall constitute a lien for the payment of the Development Impact Fee. The Fee Deferral Agreement shall be binding upon, and the benefits of the agreement shall inure, to, the parties and all successors in interest to the parties to the Fee Deferral Agreement.

- (3) Payment of Development Impact Fees shall only be deferred if the applicable administrative processing fee, as set forth in the ~~Comprehensive Fee Schedule on file in the Office of the City Clerk~~ adopted by City Council resolution, is paid by the ~~applicant~~ applicant or landowner.
- (4) ~~At the end of the Development Impact Fee deferral period as set forth in Section 142.0640(e)(1)~~ If payment of the Development Impact Fee is deferred, the deferred Development Impact Fees due shall be determined in accordance with Section 142.0640(ab)-(c), ~~except that, if the Development Impact Fee is paid prior to the end of the deferral period as set forth in Section 142.0640(d)(1), the amount of the Development Impact Fee shall be determined by the Development Impact Fee rate for the year in which the Development Impact Fee is actually paid as set forth in the Development Impact Fee schedule in effect when the Fee Deferral Agreement was executed by the City, or a subsequently-approved Development Impact Fee schedule, whichever schedule is lower, plus an automatic increase consistent with Section 142.0640(bc) if applicable, ~~or the fee schedule approved by the City Council for a subsequent update or amendment of the applicable public facilities financing plan, whichever fee schedule is lower.~~ If the Development Impact Fee is not timely paid as provided for in the Fee Deferral Agreement, the amount of the Development Impact~~

Fee shall be determined in accordance with the Development Impact Fee schedule in effect when the Development Impact Fee is actually paid, or the schedule in effect at the end of the deferral period as set forth in Section 142.0640(d)(1), plus automatic increases consistent with Section 142.0640(c), whichever amount is greater.

(de) Waiver, Adjustment, or Reduction of Fees

Any party on whom Development Impact Fees are imposed, may file an application for a waiver, adjustment, or reduction of the Development Impact Fees with the City Manager in accordance with this Subsection. Nothing in this Subsection shall affect the requirements set forth in Section 142.0640(ab). The procedures provided in this Subsection are additional to any other procedure authorized by law for protesting or challenging Development Impact Fees.

(1) [No change in text.]

(2) An application for a waiver, adjustment, or reduction of Development Impact Fees shall only be processed after the applicable fee or amount of deposit, as set forth in the ~~Comprehensive Fee Schedule on file in the Office of the City Clerk~~ adopted by City Council resolution, has been paid in full. If a deposit is required, and the deposit as ~~shown in the Comprehensive Fee Schedule~~ adopted by City Council resolution is insufficient to cover the actual cost to the City to process the application, an

additional deposit, in an amount determined by the City Manager, shall be required. Any unused portion of a deposit shall be returned. If the City Council grants the application for a waiver, adjustment, or reduction of the Development Impact Fees, then the fee or the amount of the deposit expended shall be returned, minus a five hundred dollar processing fee equal to 10 percent of the refund amount up to a maximum of five hundred dollars. If the City Council grants the application for an adjustment or reduction of the Development Impact Fees, then a portion of the fee or amount of the deposit expended, determined by the percentage reduction in the Development Impact Fee imposed, shall be returned, minus a processing fee equal to 10 percent of the refund amount up to a maximum of five hundred dollars.

(3) through (7) [No change in text.]

(f) Developer Reimbursement Agreements

For purposes of this Division, a developer reimbursement agreement means an agreement to reimburse another entity for all or a portion of the cost of the entity's contracts with consultants and/or contractors for the design and construction of a public works project. The City Manager may enter into a written developer reimbursement agreement for a public works project that contains supplemental size, capacity, number, or length, or will serve communitywide needs, the need for which is not directly

attributable to the development, provided that the following minimum requirements are satisfied:

- (1) The source of reimbursement shall be limited to Development Impact Fee (as defined in Government Code section 66000) funds.
- (2) The public works project is identified in a City Council-adopted public facilities financing plan or impact fee study and the amount of reimbursement does not exceed the amount identified for the public works project in the adopted public facilities financing plan or impact fee study.
- (3) Any contract for expenses subject to reimbursement pursuant to a developer reimbursement agreement shall be awarded in accordance with the City Charter and San Diego Municipal Code Chapter 2, Article 2, Divisions 27, 30, 31, and 33 through 36. San Diego Municipal Code Chapter 2, Article 2, Division 32 shall not apply to consultant contracts that are entered into pursuant to a developer reimbursement agreement.
- (4) The amount of the developer reimbursement agreement shall not exceed \$30,000,000.

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

Passed by the Council of The City of San Diego on MAR 22 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 06 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 08 2016

APR 06 2016

, and on

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20626