

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, TO ALLOW DEVELOPERS TO TEMPORARILY DEFER PAYMENT OF CERTAIN DEVELOPMENT IMPACT FEES FROM AT PERMIT ISSUANCE TO PRIOR TO CERTIFICATE OF OCCUPANCY

RECITALS:

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, virtually all California cities, including Fullerton, require applicants to pay mitigation fees as a precondition to issuing a building permit; and

WHEREAS, 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; and

WHEREAS, 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 the payment of certain development impact fees to the end of the project.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA ORDAINS AS FOLLOWS:

Section 1. 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 agreement is sought pursuant to this ordinance.

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

“Eligibility Criteria” means an objective standard established by the Director of Community and Economic Development with concurrence of the City Manager, which may be amended from time to time as deemed necessary.

“Nonresidential” means those activities which are permitted or allowed in the City’s commercial or industrial zoning districts or applicable Specific Plan as set forth in Title 15 of the Municipal Code.

“Residential” means those activities which are permitted or allowed in the City’s residential zoning districts or applicable Specific Plan, as set forth in Title 15 of the Municipal Code.

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

Section 2. Fee Deferral.

A. Fees Which May Be Deferred. Notwithstanding any other provision of the Municipal Code to the contrary, some or all of the development impact fees imposed on new Residential or Nonresidential buildings and structures may, upon application by an Eligible Applicant and with an approved Fee Deferral Agreement, be deferred subject to the provisions set forth below. Fees eligible to be deferred shall be:

- Parks Acquisition and Development Fee
- Traffic Impact Mitigation Fee
- Sanitation Fee
- General Plan Update Fee

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

C. Fee Deferral Agreement Required. No deferral shall be effective unless it is accomplished via a written Fee Deferral Agreement approved by both the City Manager and the applicant in a form acceptable to the City Attorney.

D. Maximum Deferral Period of 1 Year. The maximum deferral period shall be the first to occur of the following:

1. Final inspection for issuance of a temporary certificate of occupancy;
2. Final certificate of occupancy for the new building or structure on the Subject Property; or
3. One (1) year from the date of issuance of the building permit for the Subject Property.

E. Charges for Deferral. Notwithstanding any provision of the municipal code to the contrary, the deferred impact fees not paid at the time of building permit shall be subject to both of the following:

1. Costs. An up-front charge which is immediately added to the unpaid fees to cover all administrative costs incurred to allow for the fee deferral, including the cost of establishing this ordinance, administering the fee deferral program, and approving the fee deferral application.

2. Interest. Interest on unpaid fees (including the up-front charge) at the annual rate of interest which the City earns on its investment of pooled funds accrued from the date of issuance of the initial building permit until the deferred impact fees and all accrued interest is paid.

F. Collection. The payment of 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 3. Form of Security for Unpaid Development Impact Fees.

The Fee Deferral Agreement shall, among other things, require timely and full payment repayment as described in Section 2 of this Ordinance. The terms of the Fee Deferral Agreement shall be secured by an obligation that shall inure to the benefit of, and be enforceable by, the City, evidenced by either:

A. Recorded Lien. 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 include a 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; or

B. Letter of Credit. An irrevocable letter of credit which shall be releasable when the obligation is paid in full.

Section 4. Applicability only to New Projects.

This ordinance and the incentives derived hereunder shall apply only to development projects that have not obtained a building permit from the City at the time this ordinance becomes effective.

Section 5. May 1, 2021 Application Deadline.

No application for a fee deferral may be submitted on or after June 1, 2021, and no application for a fee deferral may be approved on or after July 1, 2021. These two deadlines

shall remain in place unless the City Council adopts a further ordinance or resolution to extend these two dates for up to twelve (12) months each.

Section 6. City Manager Authority

The City Manager is authorized to enter into Fee Deferral Agreements when they meet the minimum requirements of this ordinance. The City Manager is not required to enter into any Fee Deferral Agreement where the City Manager determines there is an unacceptable risk that the fees will not be repaid.

Section 7. Ordinance to Operate Exclusively.

Except as set forth in this ordinance, all other provisions of the Municipal 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 1 above.

Section 8. 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 Fullerton 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 BY THE FULLERTON CITY COUNCIL ON MAY 19, 2020.

Jennifer Fitzgerald
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Date