



DATE: August 1, 2012
TO: Honorable Mayor and City Councilmembers
FROM: Development Services Department
SUBJECT: **EXTENSION OF TEMPORARY FEE DEFERRAL PROGRAM FOR DEVELOPMENT IMPACT FEES**

SYNOPSIS

Staff recommends that the City Council adopt an ordinance extending the temporary fee-deferral program for development impact fees for two additional years to June 30, 2014.

BACKGROUND

Development impact fees are imposed by the City as a condition of development approval for the purpose of financing capital improvements. City Code states that impact fees shall be collected at the time of building permit issuance for all development projects.

The development community requested that the City of Oceanside implement an impact fee-deferral program to reduce encumbered finances during the building phase of land development. The program still imposes all development impact fees, but defers the collection of fees until final inspection or per the prescribed time length of deferral, whichever comes first. On June 17, 2009, the City Council directed the City Manager to develop a fee-deferral program for the temporary deferment of development impact fees. On October 14, 2009, the City implemented a temporary deferral program as a way to encourage economic development and job formation during this ongoing economic decline. This temporary fee-deferral program expired on June 30, 2012.

ANALYSIS

The fee-deferral program is intended to respond to the current market conditions; therefore, the existing program is temporary. Impact fees within the City's control may be deferred. Deferral of those impact fees which are not under the City's control are excluded from the fee-deferral program. Processing fees to pay for the time City staff spends working on each development application are not eligible for fee-deferral.

In order to assist the City in having sufficient funds to construct needed public infrastructure funded through development impact fees, staff identifies maximum time limits on the deferral of impact fees. These time limits account for a reasonable construction schedule given the type of project. Deferral of impact fees with no time constraints could effectively reduce Capital Improvement Project (CIP) funding for the term of the program.

Residential projects may be deferred until final inspection or twelve (12) months from the date the fee-deferral is approved, whichever comes first. Nonresidential construction may be deferred until final inspection or twenty-four (24) months from the date the fee-deferral is approved, whichever comes first.

A sunset clause is instituted because this program is a temporary measure to be used during the present time of economic distress. The City Council may consider a second extension of the deferral program if the current economic conditions persist. An amended sunset date of June 30, 2014, with one twenty-four (24) month extension is proposed.

To date the following projects have participated in the fee deferral program:

Project Name	Owner	Project Type	Total Deferred	Remaining Due
Ocean Heights	Zephyr Partners	Residential	\$474,673	Paid
Morro Hills – Villages H & I	TRI Pointe Homes	Residential	\$626,914	Paid
Darwin Glen	Zephyr Partners	Residential	\$249,771	Paid

FISCAL IMPACT

The additional costs to implement the program are a result of increased staff demand associated with processing and monitoring the fee deferral program. A standard application and administrative fee of \$250 per lot addresses these additional costs; the fee adequacy to recover costs may be reviewed and adjusted as necessary.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY’S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

1 WHEREAS, pursuant to Ordinance No. 09-0R0676-1, the City Council established a
2 temporary fee-deferral program, including a payment plan for certain fees to assist in the
3 development of projects and provide jobs and growth in the City;

4 WHEREAS, the temporary fee-deferral program expired on June 30, 2012; and

5 WHEREAS, the City Council desires to extend the temporary fee-deferral program for
6 two additional years, to the 30th day of June, 2014; and to have the extension operate
7 retroactively to be effective as of July 1, 2012.

8 NOW THEREFORE, the City Council of the City of Oceanside does ordain as follows:

9 SECTION 1. Purpose.

10 The City Council of the City of Oceanside recognizes the extraordinary fiscal challenges
11 faced by the development community due to general economic downturn and by this Ordinance
12 encourages construction of residential and commercial development projects within the City.

13 The City Council finds that the payment of certain impact fees for new development at
14 the building permit stage, in the current financial climate, discourages such development and
15 the City Council desires, by the adoption of this Ordinance, to encourage new construction by
16 establishing a payment plan for certain development impact fees.

17 SECTION 2. California Environmental Quality Act.

18 The City Planner has determined that the proposed Ordinance is not a "Project" as
19 defined under Section 15378 of the CEQA guidelines; therefore, pursuant to Section
20 15060(c)(3) of the CEQA guidelines the activity is not subject to CEQA review.

21 SECTION 3. Definitions.

22 "Applicant" means the owner of the real property or the developer with an approved
23 development project who seeks a development impact fee payment plan pursuant to this Ordinance.

24 "Approved Residential Development Project" means a market-rate residential
25 development consisting of single-family or multi-family residential units sold or rented at
26 prevailing market rates and free of any affordability restrictions that has received final
27 discretionary action by the City and that is in compliance with all environmental requirements
28 due prior to issuance of a building permit.

1 “Approved Development Project” means a nonresidential development that has received
2 final discretionary action by the City and that is in compliance with all environmental
3 requirements due prior to issuance of a building permit.

4 SECTION 4. Development Impact Fees Subject to Payment Plan.

5 Notwithstanding the provisions of Article 32B of the Oceanside Municipal Code and the
6 Ordinances listed below, the provisions of this Ordinance shall apply only to the following
7 development impact fees:

- 8 (a) The Wastewater System Buy-in Fee codified in Oceanside City Code § 29.11.1.
- 9 (b) The Water System Buy-in Fee codified in Oceanside City Code § 37.56.1.
- 10 (c) The Public Facilities Fee established pursuant to Ordinance No. 91-09.
- 11 (d) The Traffic Signal Fee established pursuant to Ordinance No. 87-19.
- 12 (e) The Thoroughfare Fee established pursuant to Ordinance No. 83-01.
- 13 (f) The Parkland Dedication Fee established pursuant to Ordinance No. 91-10.
- 14 (g) The Drainage Fee established pursuant to Ordinance No. 85-23.
- 15 (h) The Inclusionary Housing in-lieu fee for residential projects codified in Chapter
16 14C of the Oceanside City Code.

17 SECTION 5. Establishment of the Development Impact Fee Payment Plan Program
18 (hereafter “DIFP”)

- 19 (a) The DIFP is established for those development impact fees listed in Section 4 above.
- 20 (b) The DIFP shall apply only to Approved Residential Development Projects and
21 Approved Development Projects as defined in this Ordinance.

22 (c) At the time the Applicant applies for a Building Permit, the Applicant may file an
23 application with the City to request a DIFP for any or all of those development impact fees
24 listed in Section 4.

25 (d) The Applicant shall deposit with the City a non-refundable fee of \$250 per lot, for
26 the processing of the DIFP application. No building permit shall be issued for an Approved
27 Residential Development or Approved Development Project subject to this Ordinance unless
28 the Applicant has paid this processing fee.

1 (e) The Applicant, and the owner of the property, if different, shall be required to
2 enter into an agreement with the City, in a form acceptable to the City Attorney, agreeing to the
3 DIFP.

4 (f) The maximum period for any DIFP pursuant to this Chapter is 12 months from
5 the date of issuance of building permits for Approved Residential Development Projects and 24
6 months from the date of issuance of building permits for Approved Development Projects. This
7 period may be extended once for 12 months at the discretion of the City Manager. Any
8 additional extensions shall be at the discretion of the City Council.

9 (g) All fees subject to the DIFP shall be paid in full the earlier of (1) the City's
10 approval and signature on the final inspection card by the Building Official or designee for an
11 Approved Residential Development Project; or (2) the issuance of the Certificate of Occupancy
12 for an Approved Development Project; or (3) the end of the maximum period described in
13 subsection (f) of this Section.

14 SECTION 6. Agreement Shall Constitute a Lien.

15 (a) The Applicant and the owner of the property, if different, shall execute a DIFP
16 Agreement with the City. The Agreement shall be recorded by the City and shall constitute a
17 lien against the property for the payment of the fees. The City Manager shall execute the
18 Agreement on behalf of the City. When the obligation is paid in full, the City shall record a
19 Release of the Lien.

20 (b) As an alternate to recording an Agreement that constitutes a lien, the Applicant
21 may, prior to and as a condition of issuance of the building permit, execute a letter agreement
22 and provide an irrevocable letter of credit pursuant to procedures established by the City
23 Engineer. The amount of the letter of credit shall be calculated per the rates in effect at the time
24 of the execution of the DIFP Agreement with the City; however, the City may require that the
25 amount of the Letter of Credit be increased if there is an increase in fees during the time the
26 DIFP Agreement is in effect. The Applicant remains responsible for payment of all fees in
27 effect at the time of payment, regardless of the amount of the Letter of Credit.

28 //

1 SECTION 7. Determination of the Amount of Development Impact Fees.

2 The amount of development impact fees owed by the Applicant shall be determined by
3 the City pursuant to the provisions outlined in the Oceanside City Code or in the ordinances and
4 resolutions establishing the fees. These amounts shall be calculated at the time the Applicant
5 actually pays the fees, regardless of the fee schedule in place on the date of the execution of the
6 DIFP Agreement with the City.

7 SECTION 8. Not Transferable.

8 The City's approval of a DIFP is not transferable to any other project, even if the
9 Applicant is the same and the other project would qualify for the DIFP.

10 SECTION 9. Recordation Costs.

11 The Applicant shall pay all costs of recordation of documents required pursuant to this
12 Ordinance and the DIFP Agreement at the execution of the DIFP Agreement by the City.

13 SECTION 10. Sunset Provision.

14 This Ordinance shall be effective retroactively as of July 1, 2012, and shall expire on
15 June 30, 2014, and as of that date, is repealed unless extended by future action of the City
16 Council.

17 SECTION 11. Notice is hereby given that the time within which judicial review must be
18 sought on this decision is governed by CCP Section 1094.6.

19 SECTION 12. This Ordinance shall not be codified.

20 SECTION 13. The City Clerk of the City of Oceanside is hereby directed to publish the
21 title of this Ordinance once within fifteen (15) days after its passage in the North County Times,
22 a newspaper of general circulation published in the City of Oceanside. This Ordinance shall
23 take effect and be in force on the thirtieth (30th) day from and after its final passage.

24 //

25 //

26 //

27 //

28 //

1 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
2 California, held on the ____ day of _____, 2012, and, thereafter,

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
4 Oceanside, California, held on the ____ day of _____, 2012, by the following vote:

5
6 AYES:

7
8 NAYS:

9
10 ABSENT:

11
12 ABSTAIN:

13
14 MAYOR OF THE CITY OF OCEANSIDE

15
16 ATTEST:

17 APPROVED AS TO FORM:

18
19 _____
CITY CLERK

18
19 *Rodriguez*
CITY ATTORNEY

20
21
22
23
24
25
26
27 ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE EXTENDING THE
28 TEMPORARY FEE DEFERRAL PROGRAM FOR DEVELOPMENT IMPACT FEES