

ORDINANCE NO. 3163

ORDINANCE OF THE CITY OF CHULA VISTA MODIFYING
THE FEE DEFERRAL PROGRAM

WHEREAS, the City of Chula Vista (City) requires the payment of various types of fees to help off-set the impacts of new development; and

WHEREAS, Chapter 5 of the California Government Code starting with §66000 and titled the "Mitigation Fee Act" ("the Act") establishes processes and conditions for the charging and payment of impact fees for development project; and

WHEREAS, §66007(a) and (b) provides that fees on residential development shall not be required to be paid prior to the date of final inspection or certificate of occupancy; however, if the local agency determines that fees or charges for public improvements or facilities that are part of a plan are needed prior to such dates, they may be required at an earlier time; and

WHEREAS, the City has adopted several fees and charges for public improvements and facilities as part of a plan, including:

1. Telegraph Canyon Drainage Fee, adopted on August 7, 1990, pursuant to Ordinance No. 2384
2. Poggi Canyon Sewer Basin Development Impact Fee, adopted on December 9, 1997, pursuant to Ordinance No. 2716
3. Salt Creek Sewer Basin Development Impact Fee, adopted on August 24, 2004, pursuant to Ordinance No. 2974
4. Otay Ranch Village 1 and 5 Pedestrian Bridge Development Impact Fee, adopted on January 5, 1999, pursuant to Ordinance No. 2767
5. Pedestrian Bridge Development Impact Fee Program for Otay Ranch Village 11, adopted on February 18, 2003, pursuant to Ordinance No. 2898
6. "PFDIF" to pay for various public facilities, pursuant to Chapter 3.50 of the Chula Vista Municipal Code
7. Transportation Development Impact Fee for the Eastern Territories of the City (TDIF), pursuant to Chapter 3.54 of the Chula Vista Municipal Code
8. Western Transportation Development Impact Fee (WTDIF), pursuant to Chapter 3.55 of the Chula Vista Municipal Code
9. Parklands and Public Facilities Fees (Pad Fees) to pay for park related lands acquisition and the development of park facilities, pursuant to Chapter 17.10 of the Chula Vista Municipal Code
10. Sewage Capacity Charge, pursuant to Section 13.14.090 of the Chula Vista Municipal Code

WHEREAS, the City requires the preceding fees to be paid prior to or upon issuance of building permits; and

WHEREAS, the City recognizes that the payment of fees represents a substantial financial commitment for many projects; and

WHEREAS, the City recognizes that delaying certain fees may assist in the development of projects; and

WHEREAS, City Council has adopted Ordinance 3120 to establish a payment plan program to help lower the financial commitment for projects within the City until December 31, 2010; and

WHEREAS, City Council has adopted Ordinance 3126 to provide for the deferral of Park Acquisition and Development Fees; and

WHEREAS, the building community has requested that the deferral program be modified such that the above referenced fees would be payable prior to final inspection of each building permit; and

WHEREAS, the City agrees that, provided it determines such fees are not needed prior to or upon issuance of building permits and that deferral shall not impact related Capital Improvement Programs or the provision of facilities, during the period of economic downturn, it would be appropriate to collect fees prior to final inspection or certificate of occupancy; and

WHEREAS, the City would like to adopt an ordinance with a sunset period allowing for the payment of such fees prior to final inspection or certificate of occupancy upon request of the applicant and a determination by the City that such fees are not needed at an earlier time.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain that Ordinances 3120 and 3126 shall be repealed and replaced as follows:

Section 1. Environmental Review

The City's Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA.

Section 2. Purpose

The City Council of the City of Chula Vista desires to encourage the construction of residential and nonresidential development projects within the City. The City Council finds that the early payment of certain impact fees for new development is not always essential to the orderly and efficient development and in the current economic downturn, creates a barrier to such development. The City, therefore desires, by the adoption of this Ordinance, to ease such barrier by delaying the trigger for the payment of some fees for a certain period of time, provided the City determines that such fees will have no impact on the City's improvement programs and provision of public facilities.

Section 3. Definitions

"Applicant" means the owner of the real property or the developer with an approved development project who seeks to defer a development impact fee until final inspection or certificate of occupancy.

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

"Approved Development Project" means a nonresidential development which has received final discretionary action by the City and which is in compliance with all environmental requirements due prior to issuance of a building permit.

Section 4. Application of this Ordinance

This Ordinance shall apply only to Approved Residential Development Projects and Approved Development Projects as defined in this Ordinance.

Section 5. Fees Subject to the Payment Plan Program

Notwithstanding the provisions of Chapters 3.54, 3.55 and 17.10 of the Chula Vista Municipal Code and the Ordinances listed below to the contrary, the provisions of this Ordinance shall apply only to the following fees:

- (A) the Sewer Capacity Fee codified in Section 13.14.090 of the Chula Vista Municipal Code;
- (B) the Development Impact Fees to Pay for Various Public Facilities codified in Chapter 3.50 of the Chula Vista Municipal Code;
- (C) the Eastern Area Transportation Development Impact Fee codified in Chapter 3.54 of the Chula Vista Municipal Code;
- (D) the Western Transportation Development Impact Fee codified in Chapter 3.55 of the Chula Vista Municipal Code;
- (E) the Telegraph Canyon Drainage Fee established on August 7, 1990 pursuant to Ordinance No. 2384;
- (F) the Poggi Canyon Sewer Basin Development Impact Fee established on December 9, 1997, pursuant to Ordinance No. 2716;

(G) the Salt Creek Sewer Basin Development Impact Fee established on August 24, 2004 pursuant to Ordinance No.2974;

(H) the Otay Ranch Village 1 and 5 Pedestrian Bridge Development Impact Fee established on January 5, 1999, pursuant to Ordinance No. 2767;

(I) the Pedestrian Bridge Development Impact Fee Program for Otay Ranch Village 11 established on February 18, 2003, pursuant to Ordinance No. 2898; and

(J) the Parklands and Public Facilities fees of Title 17.10 of the Chula Vista Municipal Code.

Section 6. Time of Payment of Fee

(A) All fees subject to this Ordinance shall be paid prior to Final Inspection or Certificate of Occupancy.

(B) Notwithstanding Section 6(A), above, the City Manager, in his/her sole discretion, may require payment of the fees at an earlier date upon the occurrence of any of the following events:

1. the change of ownership of the Approved Residential Development Project, Approved Development Project, or any portion or portions thereof.
2. upon the City's Finance Director determination that the fees are necessary based on the adopted facilities programs in accordance with section 66007 (b) 1 of the Government Code.
3. upon a determination by the City' Finance Director, that there exists a risk associated with the collection of fees at a date later than permit issuance.

Section 7. Amount of Fees Due and Payable

(A) The amount of development impact fees due and payable by the Applicant shall be the amount of the fee at the time of payment, not the time of building permit issuance.

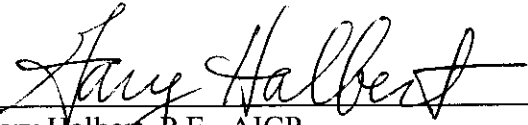
(B) In the event that the City, for any reason, fails to collect any or all fees prior to Final Inspection or Certificate of Occupancy, such fee shall remain the obligation of the applicant, be subject to interest at the rate of 2% per annum from the date on which Final Inspection or Certificate of Occupancy was issued, and be adjusted and increased by any amount incurred by the City related to the collection of such fees.

Section 8. Expiration of this Ordinance

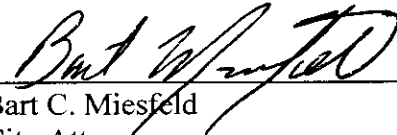
This Ordinance shall take effect thirty days after final passage and shall automatically expire on December 31, 2011, and as of that date, is deemed repealed. Notwithstanding the foregoing, any building permit issued prior to the expiration of this Ordinance shall not be required to pay fees until Final Inspection or Certificate of Occupancy, provided none of the events identified in Section 6(B) have occurred.

Presented by

Approved as to form by




Gary Halbert, P.E., AICP
Assistant City Manager/Development Services
Director



Bart C. Miesfeld
City Attorney

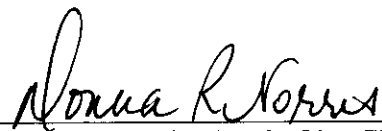
PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 14th day of September 2010, by the following vote:

AYES: Councilmembers: Bensoussan, Castaneda, McCann, Ramirez and Cox
NAYS: Councilmembers: None
ABSENT: Councilmembers: None



Cheryl Cox, Mayor

ATTEST:



Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3163 had its first reading at a regular meeting held on the 17th day of August 2010 and its second reading and adoption at a regular meeting of said City Council held on the 14th day of September 2010; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

Executed this 14th day of September 2010.



Donna R. Norris, CMC, City Clerk