

ORDINANCE NO. 2008-052

Adopted by the Sacramento City Council

October 28, 2008

ESTABLISHING A TEMPORARY PROGRAM FOR DEFERRING PAYMENT OF CITY FEES ON DEVELOPMENT PROJECTS BY ADDING CHAPTER 18.52 TO THE SACRAMENTO CITY CODE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1.

The Sacramento City Council hereby finds as follows:

- A. Fees imposed on development can pose a substantial financial burden on many projects, especially if developers must pay the fees when building permits are issued. To help stimulate commercial and residential development, the city offers a fee-financing program for development projects that meet certain criteria.
- B. To further stimulate such development during the current economic slowdown, the city will allow developers to defer payment of specified city fees in accordance with the criteria and conditions set out in section 2 of this ordinance.

Section 2.

The Sacramento City Council hereby amends the Sacramento City Code by adding the following as Chapter 18.52 of Title 18:

Chapter 18.52 DEFERRING PAYMENT OF CITY FEES ON DEVELOPMENT PROJECTS

18.52.010 Definitions.

The following definitions apply in this chapter:

- A. "City Attorney" means the city attorney or the city attorney's designee.
- B. "City Fee" means any of the following fees the city imposes on a Project and collects when the city issues a building permit for the Project:
 - 1. Downtown Transportation Fee (subsection A.1 of section 18.36.040)
 - 2. Railyards Transportation Fee (subsection A.1 of section 18.36.040)
 - 3. Richards Boulevard Transportation Fee (subsection A.1 of section 18.36.040)

4. Railyards Public Facilities Fee (subsection A.2 of section 18.36.040)
5. Richards Boulevard Public Facilities Fee (subsection A.3 of section 18.36.040)
6. Jacinto Creek Facilities Fee (subsection A.1 of section 18.28.050 and subsection B of section 18.28.110)
7. North Natomas Public Facilities Fee (subsection A.1 of section 18.24.050)
8. North Natomas Transit Fee (subsection A.2 of section 18.24.050)
9. North Natomas Public Land Acquisition Fee (subsection A of section 18.24.280)
10. North Natomas Regional Park Land Acquisition Fee (subsection B of section 18.24.280)
11. Park Development Impact Fee (subsection A of section 18.44.030)
12. Building Excise Tax (section 3.36.010)
13. Willowcreek Fee (subsection A.1 of section 18.32.050)
14. Sewer Development Fee (section 13.08.480)
15. Combined Sewer Development fee (sewer 13.08.490)
16. Water System Development Fee (section 13.04.820)

C. "City Manager" means the city manager or the city manager's designee.

D. "City Treasurer" means the city treasurer or the city treasurer's designee.

E. "Deferral Agreement" means an agreement that meets the criteria set forth in subsection section 18.52.030.

F. "Developer" means a Person undertaking a Project.

G. "Program" means the program established by this chapter for deferring payment of City Fees.

H. "Project" means a project undertaken within the city for the purpose of commercial or residential development, other than a project undertaken by or for the city or another public agency.

18.52.020 Procedure for Deferring Payment of City Fees.

Notwithstanding any other provision of the Sacramento City Code, the city may defer payment of a City Fee in accordance with the following criteria and conditions:

A. *Application.* A Developer who wishes to participate in the Program must submit a written application to the city's Development Services Department, using a city-approved form.

B. *Approval.* A Developer may participate in the Program only if the City Manager approves the Developer's application. The City Manager shall not approve an application unless the Project meets all of the following requirements:

1. The Project is on a site within the city.

2. All payments of taxes and assessments on the Project site are current.
3. The Developer has all necessary land-use entitlements for the Project.
4. The Developer passes any risk assessment the city conducts to determine the Developer's ability to pay all deferred City Fees when due. At the City Manager's discretion, the risk assessment may also cover the Developer's affiliates. The risk assessment may include but is not limited to the following criteria:
 - a. Neither the Developer nor any of the Developer's affiliates has had a foreclosure on any property during the four years preceding submission of the application.
 - b. Neither the Developer nor any of the Developer's affiliates has had a bankruptcy filing in the four years preceding submission of the application.
 - c. Neither the Developer nor any of the Developer's affiliates is subject to an outstanding civil judgment.
6. The City Manager determines that deferral of City Fees on the Project will not endanger the public health, safety, or welfare.
7. The Developer delivers to the City Attorney a Deferral Agreement that complies with section 18.52.030 and is signed by a person duly authorized to bind the Developer.
8. The Developer has provided the city with evidence confirming to the City Manager's satisfaction that the Developer has satisfied all requirements for participation in the Program.

18.52.030 Deferral Agreement.

The Deferral Agreement sets forth the conditions under which the city will defer payment of City Fees. It must be in a form acceptable to the City Attorney and must include the following provisions:

- A. **Security.** Except as provided in subsection B of this section, the Developer shall secure payment of the deferred City Fees by providing the city with security in an amount equal to 115% of the deferred City Fees on the effective date of the Deferral Agreement:
 1. The City Treasurer shall determine, from the following list, the type of security the Developer must provide:
 - a. A perfected security interest in a savings passbook or a certificate of deposit.
 - b. An irrevocable standby letter of credit.
 - c. A surety bond securing the Developer's performance under the Deferral Agreement.

- d. The recording against the Project site of a senior deed of trust in the city's favor (i.e., all other deeds of trust and liens must be subordinate to the city's deed of trust to the extent allowed by law).
- e. A perfected security interest in negotiable securities approved by the City Treasurer.
- f. A reservation of funds by the Developer's construction lender. The city must be a party to an agreement, acceptable to the City Attorney and the City Treasurer in their sole discretion, under which the construction lender agrees to fund payment of the deferred City Fees if the Developer fails to pay the fees when due and the City Treasurer tenders a written demand for such funding.
- g. Any other type of security that the City Attorney and the City Treasurer determine, in their sole discretion, to be comparable to the types of security described in subsections A.1.a through A.1.f of this section.

2. All security that the Developer provides under subsection A of this section must be acceptable to the City Treasurer and the City Attorney in their sole discretion. The city shall not issue building permits for the Project until the Developer has provided the required security, and any building permit issued before the Developer has provided the required security is void. The Developer shall pay any recording, escrow, reconveyance, and other costs associated with the security.

B. *Waiver of Security.* With respect to a Project or portion of a Project that consists solely of single-family residences, the City Treasurer may waive the security requirement of subsection A in this section if, after reviewing risk assessment conducted for the Project Developer under subsection B.4 of section 18.52.020, the City Treasurer determines that payment of the deferred City Fees will be adequately secured by requiring payment as a condition precedent for either of the following:

1. the city's issuing a certificate of occupancy or temporary certificate of occupancy; or
2. the city's conducting a final inspection (if the city does not issue certificates of occupancy for single-family residences).

C. *Start of Construction.* The Developer shall begin to construct the Project within six months after the effective date of the Deferral Agreement. The City Manager shall determine when the Developer has begun construction. If the Developer does not begin construction within six months, then the deferred City Fees will become immediately due and payable unless the City Manager extends the six-month deadline, in writing, for an additional six months. The deferred City Fees will also become immediately due and payable if the building permits associated with the fees are declared void or otherwise invalidated.

D. *Payment of Deferred City Fees.* The Developer shall pay the deferred City Fees as follows:

1. Except as provided in subsection D.2 of this section, the deferred City Fees associated with each building permit for the Project are due and payable when, for the building that the permit covers, the city issues a certificate of occupancy or a temporary certificate of occupancy or conducts a final inspection (if the city does not issue certificates of occupancy for such buildings). Payment of the fees, including any late fees and administrative fees assessed under subsection F of this section, is a condition precedent for issuing the certificate of occupancy or temporary certificate of occupancy or for conducting a final inspection.
2. If the Developer secures payment of the deferred City Fees in accordance with subsection A.1.d of this section by recording a deed of trust against the Project site, then, at the City Manager's sole discretion, the Developer shall pay the deferred City Fees for each Project lot through escrow when the Developer sells the lot to a third party.
3. Notwithstanding subsections D.1 and D.2 of this section, the Developer shall pay all deferred City Fees in full no later than three years after the effective date of the Deferral Agreement. The City Manager may extend this deadline up to one year if the City Manager determines that the Developer has made substantial progress on the Project.
4. The Developer may pay deferred City Fees at any time before the payment dates set forth in subsections D.1, D.2, and D.3 of this section.

E. *Payment Amount.* The amount of deferred City Fees to be paid is the amount of the fees on the effective date of the Deferral Agreement, except as follows:

1. The city will adjust the amount of the North Natomas Public Facilities Fee (subsection A.1 of section 18.24.050) in accordance with the adjustment procedure set forth in the North Natomas Financing Plan on the date of payment.
2. The city will adjust the amount of the Jacinto Creek Facilities Fee (subsection A.1 of section 18.28.050 and subsection B of section 18.28.110) in accordance with section 18.32.130.
3. The city will adjust the amount of the Willowcreek Fee (subsection A.1 of section 18.32.050) in accordance with section 18.32.130.
4. The city will adjust the amount of deferred City Fees under subsection E.1, E.2, or E.3 of this section only if the adjusted amount of the deferred fees is greater than the amount of the deferred fees on the effective date of the Deferral Agreement.

F. *Late Payment.* If the Developer does not pay a deferred City Fee within three years after the date of the Deferral Agreement (four years if the City Manager extends the agreement in accordance with subsection D.3 of this section), then the Developer shall pay the deferred City Fees in the amount equal to the amount of the fees in effect at the

time of payment, plus a late fee equal to 10% of the amount to be paid, plus the city's administrative fees for managing the Program.

- G. *Collection Expenses.* If the Developer does not pay deferred City Fees when due, then the Developer shall pay all expenses the city incurs to collect the fees, including but not limited to city staff time, third-party costs, and reasonable attorneys' fees and litigation costs.
- H. *Prevailing Wages.* Depending on the circumstances, the Developer's participation in the Program may cause the Developer's Project to be a "public work" for which the California Labor Code requires the payment of prevailing wages. The city makes no representation regarding the application of prevailing-wage laws to the Project, and the Developer should consult with the Developer's own legal counsel on this issue before participating in the Program.

18.52.040 Expiration of the Program.

The Program expires on December 31, 2009, and no new deferrals of City Fees may be approved after that date. Any deferrals approved on or before that date will remain in effect in accordance with the terms of this ordinance and the related Deferral Agreements.

Adopted by the City of Sacramento City Council on October 28, 2008 by the following vote:

Ayes: Councilmembers Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: Councilmember Cohn.



Mayor Heather Fargo

Attest:



Shirley Concolino, City Clerk

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