

ORDINANCE NO. 802

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA TEMPORARILY REVISING REGULATIONS RELATING TO DURATION OF BUILDING AND GRADING PERMITS AND DEFERRAL OF CERTAIN DEVELOPMENT IMPACT FEES.

A. Recitals.

(i) The Mitigation Fee Act, Government Code Section 66000 et seq., authorizes the establishment of a system of development impact fees to provide for the construction or financing of the construction of public facilities to accommodate the needs, demands, and burdens of new development.

(ii) The City Council of the City of Rancho Cucamonga has heretofore adopted such a system of development impact fees.

(iii) Pursuant to Government Code Section 66007(g), local agencies may defer the collection of development impact fees for residential development projects up to the close of escrow.

(iv) It is the intent of the City Council in adopting this Ordinance to temporarily alleviate certain financial burdens to residential development by providing a limited duration economic stimulus incentive to new residential development projects within the City for eligible applicants, by permitting an extension of time within which to obtain final inspections and permits for residential projects under construction or in plan check, and payment of certain development fees to be deferred as permitted by Government Code Section 66007(g).

(v) On December 17, 2008, the City Council conducted a duly noticed hearing concerning the administrative rates and fees established herein.

(vi) All legal prerequisites to the adoption of this Ordinance have occurred.

B. Ordinance.

NOW, THEREFORE, the City Council of the City of Rancho Cucamonga hereby finds and ordains as follows:

Section 1. The facts set forth in the Recitals, Part A of this Ordinance, are true and correct.

Section 2. Notwithstanding any other provision of the Rancho Cucamonga Municipal Code, or any building related code of the State of California adopted by reference by the City, any property owner or lessee whose interest appears on record, on any residential construction project (collectively "Developer" hereinafter in this Ordinance) for which initial, required permit(s) have been obtained, may file a written request with the City's Building and Safety Department for a one time extension of up to two years to receive any required final inspections and permit sign-off. As a condition of such permit extension, the Developer shall maintain all affected areas of construction or grading free of dust, erosion and/or any other conditions that would constitute a nuisance or would otherwise have adverse physical impacts on adjacent properties. The Building and Safety Official, or designee, shall be authorized to place conditions on any such extension in order to more fully implement the provisions of this Ordinance and protect and preserve the public health and safety.

Section 3. Notwithstanding any other provision of the Rancho Cucamonga Municipal Code or any building related code of the State of California adopted by reference by the City, any Developer of a residential construction project that is currently undergoing plan checking by the City, may file a written request with the City's Building and Safety Department for a one time extension of up to two years to obtain all required building permits following completion of plan checking. As a condition of such permit extension, the Developer shall maintain all affected areas of construction or grading free of dust, erosion and/or any other conditions that would constitute a nuisance or would otherwise have adverse physical impacts on adjacent properties. The Building and Safety Official, or designee, shall be authorized to place conditions on any such extension in order to more fully implement the provisions of this Ordinance and protect and preserve the public health and safety.

Section 4. The City Council hereby adopts a development impact fee ("DIF") deferral program for residential construction projects, providing for deferral of development fees for Beautification (see City Resolution No. 79-1), Transportation (see RCMC Chapter 3.28 and Resolution 07-160), Park Land (see RCMC Chapter 16.32) and Drainage (see RCMC Chapters 13.08 and 13.09; Resolutions 02-061, 90-111, and 01-067). Eligibility and program requirements shall be as set forth in this section.

A. DIF deferral is available for new single-family and multi-residential projects that are currently under construction, in plan check, or have received all governmental entitlements necessary for construction. DIF deferral under this section is not available for projects entitled pursuant to a development agreement.

B. Any eligible Developer wishing to participate in the DIF deferral program shall file a written request and current preliminary title report showing the Developer's interest in the subject property with the City's Engineering Department, and pay an administrative fee in the amount of \$1060.00 per each DIF deferral agreement. The DIF deferral agreement shall apply to any phase of the Developer's project for which the issued building permit(s) applies.

The deferred DIF applicable to such phase shall be paid as required by this Ordinance, whether or not any other phase of the project remains incomplete. Any modification or request to extend a DIF deferral shall be processed at City staff's actual time involved billed at the rate of \$117.00 per hour. No request for approval to participate in the DIF deferral program shall be accepted unless the request is submitted, and all initial required building permits are obtained, between February 6, 2009 and August 6, 2009.

C. From the date the initial permit(s) is obtained, and subject to the provisions of California Government Code Section 66007(g), the maximum period of DIF deferral shall be one year. Unless an extension is granted prior to deferral expiration, Developer shall immediately pay to City all deferred fees at the rate currently in effect, upon the expiration of the one year DIF deferral period; provided, however, that notwithstanding the fee deferral, Developer shall pay all of the deferred fees at the rate currently in effect upon the sooner of: completion of final inspection, issuance of a certificate of occupancy, or the close of any escrow arising out of the sale or conveyance of the subject property, if any of the foregoing events occur during the one year deferral period.

D. Conditions applicable to DIF deferral approval:

1. Within thirty (30) days of the date of approval, and prior to and as a condition of building permit issuance, Developer shall enter into a DIF deferral agreement with the City utilizing the City-provided form of agreement, guaranteeing payment of the deferred fees at the rate in effect at the time actual payment occurs. The City may cause this DIF deferral agreement to immediately be recorded. Any expense of recordation shall be paid by the Developer. Each such agreement shall incorporate the following provisions:

(a) The agreement shall provide that if, prior to expiration of the deferral, the project fails for any reason, or the project otherwise fails to move forward in a timely manner as solely determined by the City, then upon any sale or conveyance of the subject property, the purchaser, or any successor in interest or assign of the original Developer, shall pay the deferred fees through escrow as a condition of such sale or conveyance.

(b) The obligation to pay the DIF shall inure to the benefit of, and be enforceable by, the City. The agreement shall contain the legal description of the property affected, shall be recorded with the County of San Bernardino and, from the date of recordation, shall constitute a lien for the payment of the deferred DIF, which shall be enforceable against successors in interest to the Developer at the time of issuance of the building permit. The lien for payment of the fee shall not be subordinated. A deed of trust and the agreement shall be recorded in the grantor-grantee index in the name of the City of Rancho Cucamonga as grantee and in the name of the Developer as grantor. The City shall record a release of obligation, containing a legal description of the property, in the event the obligation is paid in full.

(c) The agreement shall require the Developer to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued, including effective notice to the City, and to provide in the escrow instructions that the fee is to be paid to the City from the sale proceeds in escrow prior to disbursing proceeds to the seller.

2. Should any DIF that is deferred not be paid at the time due and payable; (i) all unpaid fees shall be accelerated and become immediately due and payable; and (ii) the City may pursue collection through all available legal and administrative means including, but not limited to, judicial or non-judicial foreclosure of the recorded lien against the affected property and/or civil judgment against the Developer for breach of contract and/or retention of the security or deposit provided hereunder.

3. At least once every three (3) months, the Developer shall provide a written report to the City's Engineering Department that shall include a detailed status of the project including, but not limited to, estimated time of completion of plan check, status of required inspections, and estimated time of project completion.

4. Any Developer may request and receive, at the discretion of the City Council in a decision expressed by minute motion, an extension of the DIF deferral, provided the project is determined to be moving forward in a timely manner and is at a substantial stage of construction. Any request to extend a DIF deferral shall be processed at City staff's actual time involved billed at the rate of \$117.00 per hour. If such an extension is granted by the City Council, it shall not take effect unless and until the Developer pays a "good faith" deposit of not less than twenty percent (20%) of the total amount of the DIF. No extension shall be deemed to permit payment of any deferred DIF beyond the close of any escrow arising out of the sale or conveyance of the subject property.

Section 5. The provisions of this Ordinance shall be deemed to preempt and supercede any conflicting provisions contained in the Rancho Cucamonga Municipal Code, including codes adopted by reference therein, and any City resolutions, until expiration or repeal hereof.

Section 6. The City Council finds that the fees and rates established herein do not exceed the estimated reasonable cost of providing the service for each fee or rate is charged.

Section 7. The City Council has evaluated the potential environmental impacts that would result from the adoption of this Ordinance, and determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) and the Guidelines thereunder, pursuant to Title 14, Section 15268 (Ministerial Projects) of the California Code of Regulations.

Section 8. This Ordinance shall be automatically repealed and of no further force or effect at the end of one (1) year following its effective date, unless extended by Ordinance of the City Council of the City of Rancho Cucamonga.

Section 9. **Severability.** The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

Section 10. The City Clerk shall certify to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 7th day of January 2009.

AYES: Gutierrez, Kurth, Michael, Spagnolo, Williams

NOES: None

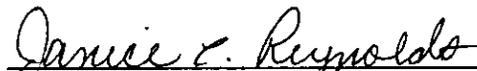
ABSENT: None

ABSTAINED: None



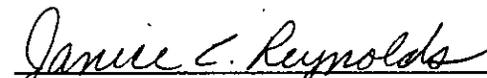
Donald J. Kurth, M.D., Mayor

ATTEST:


Janice C. Reynolds, City Clerk

I, **JANICE C. REYNOLDS, CITY CLERK** of the City of Rancho Cucamonga, California, do hereby certify that the foregoing Ordinance was introduced at a Regular Meeting of the Council of the City of Rancho Cucamonga held on the 17th day of December 2008, and was passed at a Regular Meeting of the City Council of the City of Rancho Cucamonga held on the 7th day January 2009.

Executed this 8th day of January 2009, at Rancho Cucamonga, California.


Janice C. Reynolds, City Clerk