

ORDINANCE NO. 2855

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AMENDING SECTIONS 3.50.020, 3.50.030, 3.50.050, 3.50.070, AND 3.50.090 OF THE CHULA VISTA MUNICIPAL CODE RELATING TO A DEVELOPMENT IMPACT FEE TO PAY FOR VARIOUS PUBLIC FACILITIES WITHIN THE CITY OF CHULA VISTA'S GENERAL PLAN AREA BOUNDARY

WHEREAS, in June 2000, the City Council of the City of Chula Vista adopted Ordinance No. 2810, increasing the Public Facilities Impact Fee (PFDIF) from \$2,150 to \$2,618 - the first significant increase in nine years; and

WHEREAS, the increase was based on very preliminary versions of the new police facility and civic center expansion master plans; and

WHEREAS, the design firm of Highland Partnership, Inc. was subsequently hired to provide a rigorous needs assessment and cost analysis for the police and civic center expansion projects; and

WHEREAS, new master plans for the police facility and civic center expansion - the two most costly PFDIF projects - were approved by Council on July 17, 2001, containing updated costs that necessitate a fee increase; and

WHEREAS, the impact fee is solely based upon that portion of project costs which are attributable to new development; and

WHEREAS, under limited circumstances, developers of low/moderate-income housing may need to defer or prepay impact fees at the current rate for up to 500 EDUs, in order to financially protect the public-purpose project; and

WHEREAS, the fee increase was developed in conjunction with developers and the Building Industry Association (BIA); and

WHEREAS, development is considered to take place in accordance with the Phasing Plan established by the City's Planning Department which is subject to change depending on actual development phasing; and

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

THE CITY COUNCIL OF THE CITY OF CHULA VISTA DOES ORDAIN AS FOLLOWS:

SECTION 1. That the existing Ordinance Nos. 2432, 2320, 2554 and 2810 are hereby superseded, and a new Chapter 3.50 is hereby added to the Chula Vista Municipal Code to read as follows:

Chapter 3.50

DEVELOPMENT IMPACT FEES TO PAY FOR VARIOUS PUBLIC FACILITIES

3.50.010 General Intent.

The city's general plan land use and public facilities elements require that adequate public facilities be available to accommodate increased population created by new development within the city of Chula Vista.

The city council has determined that new development will create adverse impacts on the city's existing public facilities which must be mitigated by the financing and construction of certain public facilities which are the subject of this chapter. New development contributes to the cumulative burden on these public facilities in direct relationship to the amount of population generated by the development or the gross acreage of the commercial or industrial land in the development.

The city council has determined that a reasonable means of financing the public facilities is to charge a fee on all developments in the city of Chula Vista. Imposition of the public facilities development impact fee on all new development for which building permits have not yet been issued is necessary in order to protect the public safety and welfare in order to ensure effective implementation of the city's general plan.

3.50.020 Definitions.

For the purposes of this chapter, the following words or phrases shall be construed as defined in this section, unless from the context it appears that a different meaning is intended.

- A. "Building permit" means a permit required by and issued pursuant to the Uniform Building Code as adopted by reference by this city.
- B. "Developer" means the owner or developer of a development.
- C. "Development permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the city.
- D. "Development project" or "development" means any activity described as the following:
 - 1. Any new residential dwelling unit developed on vacant land;

2. Any new commercial/office or industrial development constructed on vacant land;
3. Any expansions to established developments or new developments on non-vacant land in those land use categories listed in 1 and 2 above, if the result is a net increase in EDUs. The fee shall be based solely on this net EDU increase.
4. Any new or expanding special land use project;
5. Any special purpose project developed on vacant land or non-vacant land, or expanded within a pre-existing site, if the result is a net increase in EDUs. The fee shall be based solely on this net EDU increase;
6. Any other development project not listed above but described in Section 65927 and 65928 of the State Government Code.

E. "Community purpose facility" means a facility which serves one of the following purposes:

1. Social service activities, including such services as Boy Scouts and Girl Scouts, Boys and Girls Club, Alcoholic Anonymous and services for the homeless;
2. Public schools;
3. Private schools;
4. Daycare;
5. Senior care and recreation;
6. Worship, spiritual growth and development.

F. "Special land use" means any non-residential, non-commercial/office or non-industrial development project (e.g. Olympic Training Center, hospitals, utilities), or non-special purpose project.

G. "Special purpose project" means any for-profit community purpose facility (e.g. daycare).

H. "Engineer report" refers to the April 20, 1993 "development impact fees for public facilities" report.

I. "Extraordinary project cost increases" means increases resulting from costs that could not have been reasonably foreseen at the time a project budget was established.

J. "Extraordinary EDU change" means an increase or decrease in the number of remaining planned equivalent dwelling units (EDUs) for which building permits have not yet been pulled, which changes the existing total by more than 2,000 EDUs.

3.50.030 Public Facilities to be Financed by the Fee.

A. The public facilities ("facilities"), which are the subject matter of the fee, include buildings, equipment and related one-time start-up costs or portions thereof, as detailed in Subsection C below and in the engineer report on file in the office of the city clerk.

B. The city council may modify or amend this list of facilities by written resolution in order to maintain compliance with the city's general plan or the capital improvement program.

C. The facilities are as follows:

1. Civic Center Expansion;
2. Police Department Facilities and Equipment;
3. Corporation Yard Relocation/Expansion;
4. Library System Expansion;
5. Fire Suppression System Expansion;
6. Geographic information system computer system expansion;
7. Computer system expansion;
8. Telecommunication system expansion;
9. Records management system expansion.

3.50.040 Territory to which Fee Applicable.

The area of the city of Chula Vista to which the fee herein established shall be applicable shall be the territorial limits of the city of Chula Vista ("territory") as they may from time to time be amended. (Ord 2554 '1, 1993).

3.50.050 Establishment of Fee.

A development impact fee ("fee"), to be expressed on a per equivalent dwelling unit ("EDU") basis, is hereby established to pay for the facilities within the territory. The fee shall be

paid upon the issuance of building permits for each development project within the city of Chula Vista, except that, at the discretion of the city manager, a developer may prepay all or part of civic center expansion and/or police facilities fees that would be applicable to the developer's future development projects. Prepayment would occur at the then current rate; however, the developer has sole responsibility for paying subsequent fee increases resulting from (1) "extraordinary project cost increases", (2) normal annual adjustments in the Consumer Price Index (CPI) or Building Construction Index (BCI), or (3) "extraordinary EDU changes."

3.50.060 Determination of Equivalent Dwelling Units.

Each new single family detached dwelling, single family attached dwelling, or unit within a multi-family dwelling or mobile home dwelling in a development project shall be considered one EDU for purposes of this fee. Commercial/office and industrial development projects shall be charged at the rate of 5.00 EDU's per gross acre of land. The EDU rate for each special land use development project, as defined in Section 3.50.020, shall be charged at the rate of 5.00 EDUs per gross acre of land, except that the Olympic Training Center shall be charged at the rate of 1.25 EDU's per gross acre of land. The EDU rate for each special purpose project, as defined in Section 3.50.020, shall be charged at the rate of 3 EDUs per gross acre of land. The charges shall be those outlined in Section 3.50.090.C. The fee multiplied by the total number of EDUs within a given development project represents a developer's fair share ("fair share") for that development project.

3.50.070 Time to Determine Amount Due.

The fee for each development shall be calculated at the time of building permit issuance and shall be the amount as indicated at that time, and not when the tentative map or final map were granted or applied for, or when the building permit plan check was conducted, or when application was made for the building permit, except that a developer of a development project providing low and/or moderate-income housing in accordance with Section III, Objective 1 of the 1991 housing element of the general plan may request authorization to prepay or defer the fee for up to 500 EDUs and said request may be approved at the sole discretion of the city manager. In order to facilitate those low and/or moderate-income projects, which are planned for construction through March 24, 2005, the fee for said projects shall be the fee existing as of March 25, 2002.

3.50.080 Purpose and Use of Fee.

The fee collected shall be used by the city for the following purposes in such order and at such time as determined by the city council:

- A. To pay for such of the facilities that the city council determines should be constructed, installed or purchased at that time, or to reimburse the city for facilities funded by the city from other sources.

B. To reimburse developers who have been required or permitted by Section 3.50.140.A to construct, install or purchase approved facilities listed in Section 3.50.030.C, in such amounts as the council deems appropriate.

C. To repay any and all persons who have, pursuant to prior fee ordinance 2320 or 2432, or pursuant to this ordinance, advanced or otherwise loaned funds for the construction of a facility identified herein.

D. To repay the city for administration costs associated with administration of the fee.

3.50.090 Amount of Fee.

A. The fee shall be the amounts set forth in Section 3.50.090.B and C. The city council may adjust the amount of this fee as necessary to reflect changes in the costs of the facilities as may be reflected by such index as the council deems appropriate, such as the Engineering-News Record Construction Index, or such other basis; changes in the type, size, location or cost of the facilities to be financed by the fee, changes in land use designation in the city's general plan, and upon other sound engineering, financing and planning information. Adjustments to the fee may be made by resolution amending this section.

B. The fee shall have portions which are, according to the engineer report, allocated to a specific facility ("fee components") which correspond to the costs of the various facilities, plus the administration cost for the fee, which is a percentage of the fee components' total cost divided by total EDUs, as indicated in Section 3.50.090.

C. The fee shall be the following, depending on land use:

Land Use	Fee
Residential	\$ 4,888/dwelling unit
Commercial/Office	20,860/acre
Industrial	20,860/acre
Special land use	20,860/acre
Olympic Training Center	6,110/acre
Public purpose	Exempt
Nonprofit community purpose facility	Exempt
Special purpose project, including for-profit day care	14,664/acre

3.50.100 Development Projects Exempt from the Fee.

A. Development projects by public agencies shall be exempt from the provisions of the fee if those projects are designed to provide the public service for which the agency is charged ("public purpose").

B. Community purpose facilities which are not operated for profit ("non-profit community purpose facilities") are also exempt inasmuch as these institutions provide benefit to the community as a whole including all land use categories which are the subject matter of the fee. The city council hereby determines that it is appropriate to spread any impact such non-profit community purpose facilities might have to the other land use categories subject to the fee. In the event that a court determines that the exemption herein extended to community purpose facilities shall for any reason be invalid, the city council hereby allocates the non-profit community purpose facilities' fair share to the city of Chula Vista and not to any of the land use categories which are the subject matter of the development impact land use categories.

C. Development projects which are additions or expansions to existing dwelling units or businesses, except special land use projects, shall be exempt if the addition or expansion does not result in a net increase in EDUs.

3.50.110 Authority for Accounting and Expenditures.

A. Fees collected before the effective date of the ordinance codifying this section.

1. All fees which have accrued shall remain in separate accounts ("accounts") corresponding to the facilities listed in Section 3.50.030, as established by the director of finance, and shall only be expended for the purposes associated with each facility account.
2. The director of finance is authorized to maintain accounts for the various facilities identified in this chapter and to periodically make expenditures from the accounts for the purposes set forth herein.

B. Funds collected on or after the effective date of the ordinance codifying this section.

1. The fees collected shall be deposited into a public facility financing fund ("public facilities development impact fee fund," or alternatively herein "fund") which is hereby created and shall be expended only for the purposes set forth in this chapter.
2. The director of finance is authorized to establish a single fund for the various facilities identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein.

3.50.120 Findings.

The city council finds that collection of the fee established by this chapter at the time of the building permit issuance is necessary to provide funds for the facilities and to ensure certainty in the capital facilities budgeting for growth impacted public facilities.

3.50.130 Fee Additional to Other Fees and Charges.

This fee is in addition to the requirements imposed by other city laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or developments.

3.50.135 Mandatory Oversizing of Facility; Duty to Tender Reimbursement Offer.

Whenever a developer of a development project is required as a condition of approval of a development permit to cause a facility or a portion of a facility to be built to accommodate the demands created by the development project, the city may require the developer to install, purchase or construct the Facility according to design specifications approved by the city, that being with such supplemental size or capacity required by the city ("oversized capacity requirement"). If such a oversized capacity requirement is imposed, the city shall offer to reimburse the developer from the fund either in cash or over time, with interest at the fair market value of money, as fees are collected, at the option of the city, for costs incurred by the developer for the design and construction of the facility not to exceed the estimated cost of that particular facility as included in the calculation and updating of the fee. The city may update the fee calculation as city deems appropriate prior to making such offer. This duty to offer reimbursement shall be independent of the developer's obligation to pay the fee.

3.50.140 Developer Construction of Facilities.

A. Whenever a developer of a development project would be required by application of city law or policy as a condition of approval of a development permit to construct or finance a facility, or if a developer proposes to design and construct a portion of a facility in conjunction with the prosecution of a development project within the territory, and follows the procedure for doing same hereinbelow set forth, the city council shall, in the following applicable circumstances, tender only the credit or reimbursement hereinbelow identified for that circumstance.

1. If the cost of the facility, incurred by the developer and acceptable to the city, is less than or equal to that portion of the developer's fair share related to the fee component for that facility, the city may only give a credit ("developer credit") against that portion of the developer's fair share related to the fee component for that facility ("fair share of the fee component"); or

2. If the cost of the facility, incurred by the developer and acceptable to the city, is greater than that portion of the developer's fair share related to the fee component for that facility, but less than or equal to the developer's total fair share, the city may give a credit which credit shall first be applied against that portion of the fair share related to the fee component for that facility, and the excess costs for the facility shall then be applied as credits against such other fee components of the developer's total fair share as the city manager, in his sole and unfettered discretion, shall determine; or
3. If the cost of the facility, incurred by the developer and acceptable to the city, is greater than the developer's total fair share, the city may give a credit against the developer's total fair share as the city manager, in his sole and unfettered discretion, shall determine; and/or, the city may tender to the developer a reimbursement agreement to reimburse said developer only from the fund as monies are available, over time, with interest at the fair market value of money, at the option of the city.

B. Unless otherwise stated herein, all Developer Credits shall be calculated on a dollar basis and converted into EDUs at the time building permits are pulled, based on the then current Fee.

3.50.150 Procedure for Issuance of Credits or Tender of Reimbursement Offer.

The city's extension of credits or tender of a reimbursement offer to a developer pursuant to Section 3.50.140 shall be conditioned on the developer complying with the terms and conditions of this section:

- A. Written authorization shall be requested by the developer from the city and issued by the city council by written resolution before developer may incur any costs eligible for reimbursement relating to the facility.
- B. The request for authorization shall contain the information listed in this section and such other information as may from time to time be requested by the city.
- C. If the council grants authorization, it shall be by written agreement with the developer, and on the following conditions among such other conditions as the council may from time to time impose:
 1. Developer shall prepare all plans and specifications and submit same for approval by the city.
 2. Developer shall secure and dedicate any right-of-way required for the facilities.

3. Developer shall secure all required permits and environmental clearances necessary for construction of the facilities.
4. Developer shall provide performance bonds in a form and amount, and with a surety satisfactory to the city (where the developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the value of the project).
5. Developer shall pay all city fees and costs.
6. The city shall be held harmless and indemnified, and upon tender by the city, defended by the developer for any of the costs and liabilities associated with the construction of the facilities.
7. The city will not be responsible for any of the costs of constructing the facilities. The developer shall advance all necessary funds to construct the facilities.
8. The developer shall secure at least three qualified bids for work to be done. The construction contract shall be granted to the lowest qualified bidder. If qualified, the developer may agree to perform the work at a price equal to or less than the low bid. Any claims for additional payment for extra work or charges during construction shall be justified and shall be documented to the satisfaction of the Director of Public Works.
9. The developer shall provide a detailed cost estimate, which itemizes those costs of the construction attributable to the facilities and excludes any work attributable to a specific subdivision project. The estimate is preliminary and subject to final determination by the director of public works upon completion of the facilities.
10. The city may grant partial credit for costs incurred by the developer on the facility upon determination of satisfactory incremental completion of a facility, as approved and certified by the director of public works, in an amount not to exceed 75 percent of the cost of the construction completed to the time the partial credit is granted, thereby retaining 25 percent of such credits until issuance by the city of a notice of completion.
11. When all work has been completed to the satisfaction of the city, the developer shall submit verification of payments made for the construction of the facility to the city. The director of public works shall make the final determination on expenditures which are eligible for credit or reimbursement.

3.50.140 Developer Transfer of Credits

A developer who, in accordance with the provisions of Sections 3.50.140 and 3.50.150, receives credits against future payments of the Fee for one or more Fee Components may transfer those credits as provided herein to another Developer.

(a) The Developer shall provide the City with written notice of such transfer within thirty days. The notice shall provide the following information:

The name of the Developer to whom the credits were transferred;
The dollar value of transferred credits;
The Fee Component(s) against which the credits will be applied; and
The projected rate, by Fiscal Year, that the credits will be applied, until said credits have been fully redeemed.

(b) Credits received by a Developer of a low-and/or moderate-income project, in accordance with Section 3.50.70, can only be transferred to another low-and/or moderate-income development Project.

3.50.160 Procedure for Fee Modification or Reduction.

Any developer who, because of the nature or type of uses proposed for a development project, contends that application of this fee is unconstitutional or unrelated to mitigation of the burdens of the development, may apply to the city council for a modification or reduction of the fee. The application shall be made in writing and filed with the city clerk not later than ten days after notice of the public hearing on the development permit application for the project is given, or if no development permit is required, at the time of the filing of the building permit application. The application shall state in detail the factual basis for the claim of modification or reduction. The city council shall make reasonable efforts to consider the application within sixty days after its filing. The decision of the city council shall be final. If a reduction or modification is granted, any change in use within the project shall subject the development to payment of the fee. The procedure provided by this section is additional to any other procedure authorized by law for protection or challenging this fee.

3.50.170 Fund Loans.

A. Loans by the city.

The city may loan funds to the fund to pay for facilities should the fund have insufficient funds to cover the cost of said facility. Said loans, if granted, shall be approved upon the adoption of the annual city budget and shall carry interest rates as set by the city council for each fiscal year. A schedule for repayment of said loans shall be established at the time they are made and approved by the council, with a maximum term not to exceed the life of the fund.

B. Developer loans.

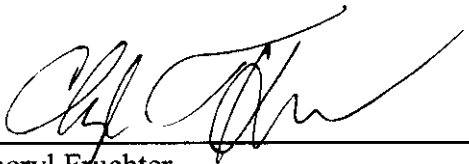
A developer may loan funds to the city as outlined in Sections 3.50.140 and 3.50.150(c)(14). The city may repay said developer loans with interest, under the terms listed in A. above.

3.50.180 Effective Date.

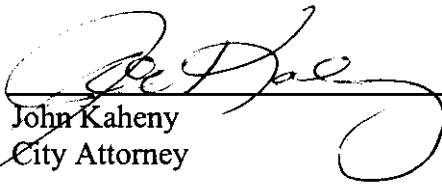
This ordinance shall become effective sixty days after its second reading and adoption.

Presented by

Approved as to form by



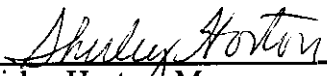
Cheryl Fruchter
Budget and Analysis Director



John Kaheny
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 9th day of April, 2002, by the following vote:

AYES:	Councilmembers:	Davis, Padilla, Rindone, Salas and Horton
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None



Shirley Horton, Mayor

ATTEST:



Susan Bigelow, City Clerk

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

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2855 had its first reading at a regular meeting held on the 26th day of March, 2002 and its second reading and adoption at a regular meeting of said City Council held on the 9th day of April, 2002.

Executed this 9th day of April, 2002.



Susan Bigelow, City Clerk