

CITY COUNCIL ORDINANCE NO. 12-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE EXTENDING THE DEVELOPMENT FEE DEFERRAL PROGRAM FOR NEW RESIDENTIAL AND COMMERCIAL DEVELOPMENT BY TEMPORARILY SUPERSEDING CERTAIN CITY MUNICIPAL AND ZONING CODE PROVISIONS RELATING TO THE REQUIRED TIME OF PAYMENT OF SPECIFIC DEVELOPMENT IMPACT FEES

WHEREAS, on May 10, 2011, the City Council of the City of Irvine adopted Ordinance No. 09-06, extending the Economic Stimulus Program for Residential Development and expanding the scope to include new commercial development; and

WHEREAS, due to continuing changes in economic conditions relating to the housing and commercial market throughout the nation, including in the City of Irvine, construction of many residential and commercial projects heretofore approved, or in the process of being approved by the City of Irvine, have been deferred by the owners and developers of such projects due to such economic conditions; and

WHEREAS, the City of Irvine relies on new residential and commercial development in the City to stimulate the local economy and provide direct and indirect benefits to the City and its residents and businesses by creating jobs, new market-rate and affordable housing units, and new tax bases and revenues to the community.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN as follows:

SECTION 1. The City Council does hereby extend the terms of the Economic Stimulus Program for New Residential and Commercial Development as set forth in this ordinance.

SECTION 2. Notwithstanding any provision of any other ordinance or resolution heretofore adopted to the contrary, the payment of the following specific development impact fees, charges, and in-lieu fees (collectively referred to as the "Development Impact Fees") for construction of new residential and commercial buildings in the City of Irvine shall be deferred until, and collection thereof by the responsible City agency, department, official or employee shall be made prior to final inspection or issuance of a temporary or final Certificate of Occupancy for such residential or commercial units by the City of Irvine, or after the passage of twelve (12) months, whichever occurs earlier, or such other time as expressly hereinafter provided:

1. Park Fee required pursuant to Municipal Code Section 5-5-1004 E 2.
2. IBC (Irvine Business Complex) Development Fee Program required pursuant to Zoning Code Section 9-36-14 F 1.
3. Systems Development Charge required pursuant to Municipal Code section 2-9-604.
4. Street surface construction impact fee required pursuant to Municipal Code Section 6-3-320.
5. Affordable Housing In-Lieu Fee required pursuant to Zoning Code Section 2-3-5 B 5 c.

SECTION 3. Final inspection of construction shall not occur, and no temporary or final certificate of occupancy for any new residential or commercial buildings shall be issued by the City of Irvine, until payment of such Development Impact Fees are made to the City of Irvine in full. The amount of the Development Impact Fees due and payable shall be based upon the fee schedules and amounts in effect at the time said Development Impact Fees would have been due and payable in the absence of this Ordinance.

SECTION 4. Payment of such Development Impact Fees shall be deemed a debt due and owing to the City of Irvine at such time which debt shall only be deemed satisfied and discharged upon payment in full to the City of Irvine.

SECTION 5. The provisions of this ordinance for deferral of payment of Development Impact Fees shall expire 360 days from the date of the adoption of this ordinance unless the City Council shall have first acted to extend or otherwise alter the provisions of this ordinance prior to that time.

SECTION 6. Nothing contained in this ordinance shall be deemed to authorize or permit the deferral of payment of any fee or charge imposed upon residential or commercial development within the City of Irvine except for those Development Impact Fees expressly enumerated in Section 2 hereof.

SECTION 7. Nothing contained in this ordinance shall be deemed to create any new fee charge, or increase any existing fee or charge, to which the procedures specified in Section 66017 of the Government Code of the State of California would be applicable.

SECTION 8. As a condition of the deferment of time of payment of any Development Impact Fee(s) pursuant to this ordinance, the City shall require the property owner, or lessee if the lessee's interest appears of record, prior to and

as a condition of issuance of the building permit, to execute either a contract secured by a lien or a letter of agreement secured by an irrevocable letter of credit. In either event, the Development Impact Fee(s) shall be paid within twelve (12) months of issuance of the building permit or prior to final inspection or issuance of a temporary or final Certificate of Occupancy, whichever occurs earlier, as set forth below.

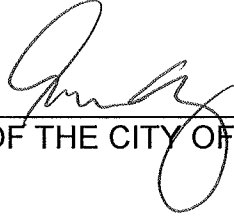
(a) With regard to a contract, the obligation to pay the Development Impact Fee(s) shall inure to the benefit of, and be enforceable by, the City regardless of whether the City is a party to the contract. The contract shall contain a legal description of the property affected, shall be recorded in the office of the county recorder of Orange County and, from the date of recordation, shall constitute a lien for the payment of the Development Impact Fee(s) which shall be enforceable against successors in interest to the property owner or lessee at the time of issuance of the building permit. The contract shall be recorded in the grantor-grantee index in the name of the City of Irvine as grantee and in the name of the property owner or lessee as grantor. The City shall record a release of the obligation, containing a legal description of the property, when the obligation is paid in full. The contract shall require the property owner or lessee to provide appropriate notification of the opening of any escrow for the sale of the property for which the building permit was issued and to provide in the escrow instructions that the fee or charge be paid to the City of Irvine from the sale proceeds in escrow prior to disbursing proceeds to the seller. The executed contract shall be deemed to supersede any conflicting provision contained in any applicable development agreement with regard to the time of payment of any Development Impact Fee(s).

(b) As an alternate to recording a contract that constitutes a lien, the property owner or lessee if the lessee's interest appears of record may, prior to and as a condition of issuance of the building permit, execute a letter of agreement and provide an irrevocable letter of credit pursuant to procedures established by the Director of Community Development.

SECTION 9. Nothing in this ordinance shall deem or be used to deem the Affordable Housing In-Lieu Fee authorized pursuant to Zoning Code Section 2-3-5 B 5 c as an ad hoc exaction, as a mandated fee required as a condition to developing property, or as a fee subject to the analysis in *Building Industry Association of Central California v. City of Patterson*, 171 Cal.App.4th 886 (2009). The Affordable Housing In-Lieu Fee is a menu option that may serve as an alternative to on-site affordable housing requirements set forth in Chapter 2-3 of the Irvine Zoning Code.

SECTION 10. This ordinance shall become operative on its effective date.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 27th day of March, 2012.



MAYOR OF THE CITY OF IRVINE

ATTEST:



CITY CLERK OF THE CITY OF IRVINE

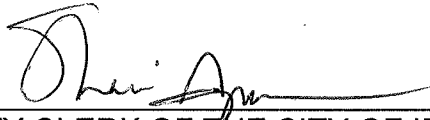
STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF IRVINE)

I, SHARIE APODACA, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on the 13th day of March 2012, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 27th day of March, 2012, by the following vote:

AYES: 5 COUNCILMEMBERS: Agran, Choi, Krom, Lalloway and Kang

NOES: 0 COUNCILMEMBERS: None

ABSENT: 0 COUNCILMEMBERS: None



CITY CLERK OF THE CITY OF IRVINE