

ORDINANCE NO. ORD-07-0017

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 18.23 TO
ESTABLISH A FIRE FACILITIES IMPACT FEE

The City Council of the City of Long Beach ordains as follows:

Section 1. The Long Beach Municipal Code is amended by adding Chapter
18.23 to read as follows:

Chapter 18.23

FIRE FACILITIES IMPACT FEE

18.23.010 Legislative findings.

A. The state of California, through the enactment of Government
Code Sections 66001 through 66009 has authorized the City to enact
development impact fees.

B. The imposition of development impact fees is one of the
preferred methods of ensuring that development bears a proportionate
share of the cost of capital facilities and related costs necessary to
accommodate such development. This must be done in order to promote
and protect the public health, safety and welfare.

C. That the continuing increase in the development of residential
and non-residential construction in the City has created an urgency in that
funds are needed for the increased demand for Fire services and the
facilities that support those services which are required to serve the
increasing residential and workforce population of the City.

1 D. The fees established pursuant to this Chapter are derived from,
2 are based upon, and do not exceed the costs of providing additional Fire
3 services attributable to new residential or non-residential construction,
4 including: master planning to more specifically identify capital facilities to
5 serve new development; the acquisition of additional property for Fire
6 facilities; the construction of buildings for Fire services; the furnishing of
7 buildings or facilities for Fire services; and the purchasing of equipment,
8 apparatus, and vehicles for Fire services.

9 E. The fees collected pursuant to this Chapter shall be used to
10 finance the Fire facilities, equipment, and apparatus identified in
11 Subsection D.

12 F. Detailed study of the impacts of future residential and non-
13 residential construction in the City, along with an analysis of the need for
14 new Fire facilities and equipment has been prepared. This study is
15 included in the "Public Safety Impact Fee Study" for the City of Long
16 Beach dated August 18, 2006 which is incorporated herein by reference
17 as though set forth in full, word for word.

18 G. There is a reasonable relationship between the need for the
19 Fire facilities, apparatus and equipment set forth in Subsection D and the
20 impacts of the types of development for which the corresponding fee is
21 charged.

22 H. There is a reasonable relationship between the fee's use and
23 the type of development for which the fee is charged.

24 I. There is a reasonable relationship between the amount of the
25 fee and the cost of the facilities, apparatus and equipment or portion
26 thereof attributable to the development on which the fee is imposed.

27 18.23.020 Purpose.

28 A Fire Facilities Impact Fee is hereby imposed on residential and

1 non-residential development for the purpose of assuring that the impacts
2 created by said development pay its fair share of the costs required to
3 support needed Fire facilities and related costs necessary to
4 accommodate such development.

5
6 18.23.030 Definitions.

7 A. "Accessory use" is as defined in Section 21.15.060 of this Code.

8 B. "Applicant" means the property owner, or duly designated agent
9 of the property owner, for which a request for building permit or
10 construction approval for a mobile home pad is received by the City.

11 C. "Building permit" means the City permit required for new
12 building construction and/or additions which add square footage pursuant
13 to Title 18 of this Code. Neither a grading permit nor a foundation permit
14 shall be considered a building permit for purposes of this Chapter.

15 D. "Calculation" means the point in time at which the City
16 calculates the Fire Facilities Impact Fee to be paid by the applicant.
17 Calculation will generally occur at the time of issuance of the applicable
18 building permit or construction approval for a mobile home pad but may
19 occur earlier in the development approval process.

20 E. "City Manager" means the City Manager of the City of Long
21 Beach or other municipal officials he/she may designate to carry out the
22 administration of this Chapter.

23 F. "Collect" or "collection" means the point in time at which the
24 Fire Facilities Impact Fees are paid by the applicant. Collection will occur
25 on the date of final inspection or the date a certificate of occupancy or
26 temporary certificate of occupancy, whichever occurs first, or in the case
27 of a mobile home pad or pads, collection will occur at or on the date of
28 construction approval is issued.

1 G. "Development" means the addition of new dwelling units and/or
2 new nonresidential square footage to an undeveloped, partially developed
3 or redeveloped site and involving the issuance of a building permit and
4 certificate of occupancy for such construction, reconstruction or use.
5 Development also includes the approval and construction of new mobile
6 home pads in existing or new mobile home parks or sites but not including
7 the following so long as no additional dwelling units or gross floor area is
8 added:

- 9 1. a permit to operate,
- 10 2. a permit for the internal alteration, remodeling,
11 rehabilitation, or other improvements or modifications to an existing
12 structure,
- 13 3. the rebuilding of a structure destroyed by an act of God
14 or the rehabilitation or replacement of a building in order to comply with
15 the City's seismic safety requirements,
- 16 4. parking facilities, or
- 17 5. the rehabilitation or replacement of a building destroyed
18 by imminent public hazard, acts of terrorism, sabotage, vandalism,
19 warfare or civil disturbance except where said destruction was caused or
20 in any manner accomplished, instigated, motivated, prompted, incited,
21 induced, influenced, or participated in by any persons or their agents
22 having any interest in the real or personal property at the location.

23 H. "Dwelling unit" or "DU" is as defined in Section 21.15.910 of
24 this Code.

25 I. "Fee setting resolution" means and refers to the City resolution
26 specifying the Fire Facilities Impact Fee per dwelling unit or mobile home
27 pad for residential development and per gross square foot of floor area for
28 nonresidential development, by type and by location. The Fire Facilities

1 Impact Fee set forth in the fee-setting resolution may be revised pursuant
2 to Section 18.23.140 and applicable state law.

3 J. "Fire Department" means the Fire Department of the City of
4 Long Beach.

5 K. "Gross square feet" or "gsf" means the area of a nonresidential
6 development measured from the exterior building lines of each floor with
7 respect to enclosed spaces but excluding parking spaces whether or not
8 enclosed. For purposes of this ordinance, the term "enclosed spaces"
9 specifically includes, but is not limited to, an area available to and
10 customarily used by the general public and all areas of business
11 establishments generally accessible to the public such as fenced or
12 partially fenced in areas of garden centers attached to and serving the
13 primary structure.

14 L. "Mixed use" is as defined in Section 21.15.1760 of this Code.

15 M. "Mobile home" is as defined in Section 21.15.1770 of this Code.

16 N. "Nonresidential development" means a development
17 undertaken for the purpose of creating gross floor area, excluding dwelling
18 units, but which includes, and is not limited to, commercial, industrial,
19 retail, office, hotel/motel, and warehouse uses involving the issuance of a
20 building permit for such construction, reconstruction or use.

21 O. "Principal use" is as defined in Section 21.15. 2170 of this
22 Code.

23 P. "Residential development" means a development undertaken
24 for the purpose of creating a new dwelling unit or units and involving the
25 issuance of a building permit and certificate of occupancy for such
26 construction, reconstruction or use, or the construction approval for a
27 mobile home pad or pads.
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18.23.040 Fund established.

A Fire Facilities Impact Fee fund is established. The Fire Facilities Impact Fee fund is a fund to be utilized for payment of the actual or estimated costs of fire facilities, apparatus and equipment related to new residential and non-residential construction as described in this Chapter.

18.23.050 Fire Facilities Impact Fee.

There is imposed a Fire Facilities Impact Fee on all new residential and non-residential development as those terms are defined in this Chapter.

18.23.060 Fee imposed.

A. Any person who, after the effective date of this ordinance, seeks to engage in residential or non-residential development including mobile home development as defined in this Chapter by obtaining a building permit or construction approval for a mobile home pad or pads is required to pay a Fire Facilities Impact Fee in the manner and amount as set forth in the then current fee-setting resolution. The Fire Facilities Impact fee imposed pursuant to this Chapter shall not apply to those projects for which a Planning Department application for Conceptual or Site Plan Review has been filed and deemed complete by the Department of Planning and Building by April 3, 2007.

B. No certificate of occupancy, temporary certificate of occupancy, final inspection approval or construction approval for a mobile home pad or pads, as applicable, for the activities listed in Subsection A of this Section shall be issued unless and until the Fire Facilities Impact Fee required by this Chapter has been paid to the City.

1 18.23.070 Calculation of Fire Facilities Impact Fee.

2 A. The Director of Planning and Building shall calculate the
3 amount of the applicable Fire Facilities Impact Fee due as specified in the
4 then current fee-setting resolution.

5 B. The Director of Planning and Building shall calculate the
6 amount of the applicable Fire Facilities Impact Fee due by:

7 1. Determining the number and type of dwelling units in a
8 residential development, or mobile home pads in a mobile home park or
9 site, and multiplying the same by the Fire Facilities Impact Fee amount
10 per dwelling unit or pad as established by the then current fee setting
11 resolution;

12 2. Determining the gross square feet of floor area, type of
13 use and location in a nonresidential development, and multiplying the
14 same by the Fire Facilities Impact Fee amount as established by the then
15 current fee-setting resolution;

16 3. Determining the number and type of dwelling units and
17 the nonresidential number of gross square feet of floor area, type of use
18 and location, in a structure containing mixed uses which include a
19 residential use, and multiplying the same by the Fire Facilities Impact Fee
20 amount for each use as established by the then current fee-setting
21 resolution;

22 4. Determining the gross square feet of floor area, type of
23 use and location in a structure containing mixed uses which include two or
24 more nonresidential principal uses, and multiplying the same by the Fire
25 Facilities Impact Fee amount as established by the then current fee-
26 setting resolution. The gross square feet of floor area of any accessory
27 use will be charged at the same rate as the predominant principal use
28 unless the Director of Planning and Building finds that the accessory use

1 is related to another principal use.

2
3 18.23.080 Payment of fee.

4 A. The City shall collect from the applicant the Fire Facilities Impact
5 Fee prior to the issuance of a certificate of occupancy, temporary
6 certificate of occupancy, final inspection or construction approval for
7 mobile home pad or pads, whichever occurs first.

8 B. Except for an administrative charge that shall be allocated to the
9 Department of Planning and Building, all funds collected shall be properly
10 identified and promptly transferred for deposit in the Fire Facilities Impact
11 Fee fund and used solely for the purposes specified in this Chapter.

12
13 18.23.090 Use of funds.

14 A. Funds collected from the Fire Facilities Impact Fee shall be
15 used to fund the costs of providing additional Fire services attributable to
16 new residential and non-residential construction and shall include:

17 1. The acquisition of additional property for Fire Department
18 facilities;

19 2. The construction of new buildings for Fire Department
20 services;

21 3. The furnishing of new buildings or facilities for Fire
22 Department services;

23 4. The purchasing of equipment, apparatus, and vehicles for
24 Fire Department services;

25 5. The funding of a master plan to identify capital facilities to
26 serve new Fire Department development.

27 6. The cost of financing (e.g., interest payments) related to
28 Items 1-5, inclusive.

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B. Funds shall not be used for periodic or routine maintenance.

C. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which Fire Facilities Impact Fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in Subsection A of this Section.

D. Funds may be used to provide refunds as described in Section 18.23.100.

18.23.100 Refund.

A. Any applicant who has paid a Fire Facilities Impact Fee pursuant to this Chapter may apply for a full or partial refund of same, if, within one (1) year after collection of the Fire Facilities Impact Fee the development project has been modified, pursuant to appropriate City ordinances and regulations, resulting in a reduction in the number of dwelling units, a change in the type of dwelling units, a reduction in square footage, or the applicability of an exemption pursuant to Section 18.23.110 of this Chapter. The City shall retain a sum equaling twenty percent (20%) of the impact fee paid by the applicant to offset the administrative costs of refund. The applicant must submit an application for such a refund in accordance with Chapter 3.48 of this Code. In no event shall a refund exceed the amount of the Fire Facilities Impact Fee actually paid.

B. Any funds not expended, encumbered or obligated by issued indebtedness by the end of the calendar quarter immediately following five (5) years from the date the Fire Facilities Impact Fee was paid shall, upon application of the then current landowner, be returned to such landowner with interest at a rate equal to the rate of interest earned by the City from the time the fee was paid, provided that the landowner submits an

1 application for a refund within one hundred eighty (180) calendar days
2 from the expiration of the five-year period.

3
4 18.23.110 Exemptions and credits.

5 A. Exemptions. Any claim of exemption must be made no later
6 than the time of application for a building permit or mobile home
7 construction approval. The following shall be exempted from payment of
8 the Fire Facilities Impact Fee:

9 1. Alterations or expansion of an existing residential building
10 where no additional dwelling units are created and where the use is not
11 changed;

12 2. The replacement of a building or structure destroyed by
13 fire, flood, earthquake or other act of God, with a new building or structure
14 of the same size and use;

15 3. The installation of a replacement mobile home on a lot or
16 other such site when a Fire Facilities Impact Fee for such mobile home
17 site has previously been paid pursuant to this Chapter, or where a mobile
18 home legally existed on such site on or prior to the effective date of the
19 ordinance codified in this Chapter;

20 4. Nonresidential Development: Construction or occupancy
21 of a new nonresidential building or structure or an addition to or expansion
22 of an existing nonresidential building or structure of three thousand
23 (3,000) gross square feet or less;

24 5. Residential Development: Construction, replacement or
25 rebuilding of a single-family dwelling (one unit per lot) on an existing lot of
26 record, or the replacement of one mobile home with another on the same
27 pad, or the moving and relocation of a single-family home from one lot
28 within the City to another lot within the City, or the legalization of an illegal

1 dwelling unit existing prior to January 1, 1964, for which an Administrative
2 Use Permit is approved in accordance with Section 21.25.403D. This
3 exemption shall not apply to tract development, to the development of
4 more than one unit per lot nor to the replacement of a single-family
5 dwelling with more than one dwelling unit;

6 6. Affordable Housing for Lower Income Households.

7 Property rented, leased, sold, conveyed or otherwise transferred, at a
8 rental price or purchase price which does not exceed the "affordable
9 housing cost" as defined in Section 50052.5 of the California Health and
10 Safety Code when provided to a "lower income household" as defined in
11 Section 50079.5 of the California Health and Safety Code or "very low
12 income household" as defined in Section 50105 of the California Health
13 and Safety Code. This exemption shall require the applicant to execute an
14 agreement to guarantee that the units shall be maintained for lower and
15 very low income households whether as units for rent or for sale or
16 transfer, for the lesser of a period of thirty years or the actual life or
17 existence of the structure, including any addition, renovation or
18 remodeling thereto. The agreement shall be in the form of a deed
19 restriction or other legally binding and enforceable document acceptable
20 to the City Attorney and shall bind the owner and any successor-in-
21 interest to the real property being developed. The agreement shall
22 subordinate, if required, to any state or federal program providing
23 affordable housing to lower and very low income households. The
24 agreement shall be recorded with the Los Angeles County Recorder prior
25 to the issuance of a certificate of occupancy. The City's Housing Services
26 Bureau shall be notified of pending transfers or purchases and give its
27 approval of the purchaser's qualifying income status and purchase price,
28 prior to the close of escrow. The City's Housing Services Bureau shall be

1 notified of pending rentals and give its approval of proposed tenant's
2 qualifying income status and rental rate, prior to the tenant's occupancy.
3 Applicant or any successor-in-interest shall be required to provide
4 annually, or as requested, the names of all tenants or purchasers, current
5 rents, and income certification to insure compliance. Voluntary removal of
6 the housing restriction or violation of the restriction shall be enforced by
7 the City's Housing Services Bureau and shall require the applicant or any
8 successor-in-interest to pay the then applicable Fire Facilities Impact Fee
9 at the time of voluntary conversion or as imposed at the time of violation
10 on the unit in violation, plus any attorneys' fees and costs of enforcement,
11 if applicable.

12 7. Hospitals as that term is defined in Section 21.15.1370 of
13 this Code.

14 B. Credits. Any applicant whose development is located within a
15 Community Facilities District (CFD), and is subject to the assessments
16 thereof, shall receive an offset credit towards the fees established by this
17 Chapter to the extent that the assessments fund improvements within the
18 CFD which would otherwise be funded by the development impact fees
19 established by this Chapter.

20
21 18.23.120 Appeals.

22 A. An applicant may appeal, by protest, any imposition of the Fire
23 Facilities Impact Fee by filing a notice of appeal with the City Clerk within
24 ninety (90) days after the applicant pays the required fee.

25 B. A valid appeal by protest of the imposition of the Fire Facilities
26 Impact Fee shall meet all of the following requirements:

27 1. Tendering in advance of the appeal any required
28 payment in full or providing assurance of payment satisfactory to the City

1 Attorney;

2 2. Serving written notice on the City including:

3 a. A statement that the required payment has been
4 tendered under protest or that required conditions have been satisfied;

5 b. A statement informing the City of the factual
6 elements of the dispute and the legal theory forming the basis of the
7 protest;

8 c. The name and address of the applicant;

9 d. The name and address of the property owner;

10 e. A description and location of the property;

11 f. The number of residential units or nonresidential
12 gross square footage proposed, by land use or dwelling unit type, as
13 appropriate; and

14 g. The date of issuance of the building permit.

15 C. The City Council shall schedule a hearing and render a final
16 decision on the applicant's appeal within sixty (60) days after the date the
17 applicant files a valid appeal.

18 D. The City Council hearing shall be administrative. Evidence shall
19 be submitted by the City and by the applicant and testimony shall be
20 taken under oath.

21 E. The burden of proof shall be on the applicant to establish that
22 the applicant is not subject to the imposition of the Fire Facilities Impact
23 Fee pursuant to the express terms of this Chapter and applicable state
24 law.

25 F. If the Fire Facilities Impact Fee has been paid in full or if the
26 notice of appeal is accompanied by a cash deposit, letter of credit, bond
27 or other surety acceptable to the City Attorney in an amount equal to the
28 Fire Facilities Impact Fee calculated to be due, the application for the

1 building permit or mobile home construction approval shall be processed.
2 The filing of a notice of appeal shall not stay the imposition or the
3 collection of the Fire Facilities Impact Fee calculated by the City to be due
4 unless sufficient and acceptable surety has been provided.

5 G. Any petition for judicial review of the City Council's final
6 decision shall be made in accordance with applicable state law and
7 pursuant to Section 18.23.130.

8
9 18.23.130 Judicial review.

10 A. Any judicial action or proceeding to attack, review, set aside,
11 void or annul the ordinance codified in this Chapter, or any provision
12 thereof, or resolution, or amendment thereto, shall be commenced within
13 ninety (90) days of the effective date of the ordinance codified in this
14 Chapter, resolution, or any amendment thereto.

15 B. Any judicial action or proceeding to attack, review, set aside or
16 annul the imposition or collection of a Fire Facilities Impact Fee on a
17 development shall be preceded by a valid appeal by protest pursuant to
18 Section 18.23.120 hereof and a final decision of the City Council pursuant
19 thereto and shall be filed and service of process effected within ninety (90)
20 days after the hearing on appeal regarding the imposition of a Fire
21 Facilities Impact Fee upon the development.

22
23 18.23.140 Annual report and amendment procedures.

24 A. Within 180 days after the last day of each fiscal year, the Fire
25 Chief of the City of Long Beach shall evaluate progress in implementation
26 of the Fire Facilities Impact Fee Program and shall prepare a report
27 thereon to the City Council in accordance with Government Code Section
28 66006 incorporating among other things:

1 1. The Fire facilities, apparatus, and equipment
2 commenced, purchased or completed utilizing monies from the Fire
3 Facilities Impact Fee fund;

4 2. The amount of the fees collected and the interest earned;
5 3. The amount of Fire Facilities Impact Fees in the fund; and
6 4. Recommended changes to the Fire Facilities Impact Fee,
7 including but not necessarily limited to, changes in the Fire Facilities
8 Impact Fee Chapter or fee-setting resolution.

9 B. Based upon the report and such other factors as the City
10 Council deems relevant and applicable, the City Council may amend the
11 ordinance codified in this Chapter or the fee-setting resolution
12 implementing this Chapter. Changes to the Fire Facilities Impact Fee
13 rates or schedules may be made by amending the fee-setting resolution.
14 Any change which increases the amount of the Fire Facilities Impact Fee
15 shall be adopted by the City Council only after a noticed public hearing.
16 Nothing herein precludes the City Council or limits its discretion to amend
17 the ordinance codified in this Chapter or the fee-setting resolution
18 establishing Fire Facilities Impact Fee rates or schedules at such other
19 times as may be deemed necessary.

20
21 18.23.150 Effect of Fire Facilities Impact Fee on zoning and subdivision
22 regulations.

23 This Chapter shall not affect, in any manner, the permissible use of
24 property, density/intensity of development, design and improvement
25 standards and public improvement requirements or any other aspect of
26 the development of land or construction of buildings, which may be
27 imposed by the City pursuant to the City's zoning regulations, subdivision
28 regulations or other ordinances or regulations of the City, which shall be

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operative and remain in full force and effect without limitation with respect to all residential and nonresidential development.

18.23.160 Violation--Penalty.

A violation of this Chapter shall be prosecuted in the same manner as misdemeanors are prosecuted; and upon conviction, the violator shall be punishable according to law. However, in addition to or in lieu of any criminal prosecution, the City shall have the power to sue in civil court to enforce the provisions of this Chapter.

18.23.170 Severability.

If any section, phrase, sentence, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions thereof.

Sec. 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three conspicuous places in the City of Long Beach, and it shall take effect on the 31st day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of April 10, 2007, by

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Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

1 the following vote:

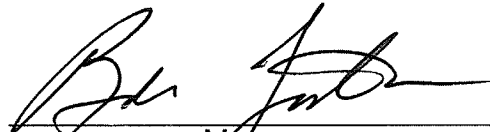
2 Ayes: Councilmembers: B. Lowenthal, S. Lowenthal, O'Donnell,
3 Schipske, Reyes Uranga, Gabelich, Lerch.

4 _____
5 _____
6 Noes: Councilmembers: None.

7 _____
8 Absent: Councilmembers: DeLong.

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11 _____
12 City Clerk

13 Approved: M/18/07

14 
15 _____
16 Mayor