

ORDINANCE NO.

ORD-48

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING 18.19 TO ESTABLISH A
SENSITIVE COASTAL RESOURCE 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
18.19 to read as follows:

Chapter 18.19

SENSITIVE COASTAL RESOURCE IMPACT FEE

18.19.010 Legislative findings.

A. The state of California, through the enactment of Government Code
Sections 66001 through 66009 has authorized the City to impose development impact
fees on new development for the purposes of funding the public infrastructure and
services necessary to serve that new development.

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, infrastructure, services 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
nonresidential construction in the Southeast Area Specific Plan (SEASP) (SP-2) plan
area has created an urgency in that funds are needed for the increased demand for
additional infrastructure and services required to protect and sustain sensitive coastal

resources which are required to serve the increasing residential and workforce population of the SEASP plan area.

D. The fees established pursuant to this Chapter are derived from, are based upon, and do not exceed the costs of providing additional infrastructure and services required to protect and sustain sensitive coastal resources attributable to new residential or nonresidential construction, in areas designated for mixed-use, community core and mixed-use marina in the SEASP plan area. The additional infrastructure and services include a baseline study, conducted prior to new development, to document the state and function of the buffer area and adjacent wetlands; monitoring that is related to impacts of nearby development (new residents and increased business patrons) such as damage from pedestrians/hikers in the buffer and wetlands area, exposure to non-native seeds from landscaping, lighting, and increased trash and debris; periodic trash and debris removal of the buffer area and adjacent wetlands and administrative costs associated with the Sensitive Coastal Resource Impact Fee program. The activities covered by the Sensitive Coastal Resource Impact Fee are specifically targeted to address the issues of increased public use and increased litter, trash, and debris arising from new development and increased population and economic activity.

E. The fees collected pursuant to this Chapter shall be used to finance the infrastructure and services identified in Subsection D.

F. A detailed study of the nexus between anticipated new development to be located in areas designated for mixed-use, community core and mixed-use marina uses in the SEASP plan area and the additional infrastructure and services required to protect and sustain sensitive coastal resources (inclusive of wetlands, buffers, and habitat) as a result of the anticipated increase in development has been prepared. This study is entitled the "Nexus Study for Sensitive Coastal Resources Impact Fee" for the City of Long Beach dated August 31, 2022 ("the Study") which is incorporated herein by reference as though set forth in full, word for word.

G. The fees collected shall apply to the areas designated for mixed-use,

1 community core and mixed-use marina uses as shown in Figure A-1 in the Appendix to
2 the Study and as further described in Section 6 of the Study.

3 H. There is a reasonable relationship between the need for the
4 additional infrastructure and services required to protect and sustain sensitive coastal
5 resources set forth in Subsection D and the impacts of the types of development for
6 which the corresponding fee is charged.

7 I. There is a reasonable relationship between the fee's use and the
8 type of development for which the fee is charged.

9 J. There is a reasonable relationship between the amount of the fee and the
10 cost of the additional infrastructure and services or portion thereof attributable to the
11 development on which the fee is imposed.

12
13 18.19.020 Purpose.

14 A Sensitive Coastal Resource Impact Fee is hereby imposed on new
15 residential and nonresidential development for the purpose of assuring that the impacts
16 created by said new development pay its fair share of the costs required to support
17 needed additional infrastructure and services and related costs necessary to
18 accommodate such development.

19
20 18.19.030 Definitions.

21 A. "Accessory use" is as defined in Section 21 .15.060 of this Code.

22 B. "Applicant" means the property owner, or duly designated agent of
23 the property owner, for which a request for building permit is received by the City.

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

28 D. "Calculation" means the point in time at which the City calculates the

1 Sensitive Coastal Resource Impact Fee to be paid by the applicant. Calculation will
2 generally occur at the time of issuance of the applicable building permit but may occur
3 earlier in the development approval process.

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

7 F. "Collect", or "collection" means the point in time at which the
8 Sensitive Coastal Resource Impact Fees are paid by the applicant. Collection will occur
9 on the date of final inspection or the date a certificate of occupancy or temporary
10 certificate of occupancy, whichever occurs first.

11 G. "Development" means the addition of new residential square footage
12 and/or new nonresidential square footage to an undeveloped, partially developed or
13 redeveloped site and involving the issuance of a building permit and certificate of
14 occupancy for such construction, reconstruction or use. Development does not include
15 the following so long as no additional gross floor area is added:

- 16 1. a permit to operate;
- 17 2. a permit for the internal alteration, remodeling,
18 rehabilitation, or other improvements or modifications to an existing
19 structure;
- 20 3. the rebuilding of a structure destroyed by an act of God
21 or the rehabilitation or replacement of a building in order to comply with the
22 City's seismic safety requirements;
- 23 4. parking facilities; or
- 24 5. the rehabilitation or replacement of a building
25 destroyed by imminent public hazard, acts of terrorism, sabotage,
26 vandalism, warfare or civil disturbance except where said destruction was
27 caused or in any manner accomplished, instigated, motivated, prompted,
28 incited, induced, influenced, or participated in by any persons or their

agents having any interest in the real or personal property at the location.

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

I. "Fee" means a Sensitive Coastal Resource Impact Fee imposed by the City of Long Beach in accordance with this Chapter.

J. "Fee setting resolution" means and refers to the City resolution specifying the Sensitive Coastal Resource Impact Fee per net increase in gross building square footage for residential and nonresidential development, by type and by location. The Sensitive Coastal Resource Impact Fee set forth in the fee-setting resolution may be revised pursuant to Section 18.19.140 and applicable state law.

K. "Development Services Department" means the Development Services Department of the City of Long Beach.

L. "Gross building square footage" means the total area of a residential and/or nonresidential development measured from the exterior building lines of each floor with respect to enclosed spaces but excluding parking spaces whether or not enclosed. For purposes of this ordinance, the term "enclosed spaces" specifically includes, but is not limited to, an area available to and customarily used by the residential occupants and/or general public and all areas of business establishments generally accessible to the public such as fenced or partially fenced in areas of garden centers attached to and serving the primary structure.

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

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

O. "Principal use" is as defined in Section 21.15.2170 of this Code.

P. "Residential development" means a development undertaken for the

1 purpose of creating a new dwelling unit or units and involving the issuance of a building
2 permit and certificate of occupancy for such construction, reconstruction or use.

3
4 18.19.040 Fund established.

5 A Sensitive Coastal Resource Impact Fee fund is established. The
6 Sensitive Coastal Resource Impact Fee fund is a fund to be utilized for payment of the
7 actual or estimated costs of additional infrastructure and services required to protect and
8 sustain sensitive coastal resources related to new residential and nonresidential
9 construction as described in this Chapter and shall be administered in compliance with
10 Government Code Section 66006.

11
12 18.19.050 Sensitive Coastal Resource Impact Fee.

13 There is imposed a Sensitive Coastal Resource Impact Fee on all new
14 residential and nonresidential development in the areas designated for specific parcels
15 mixed-use community core and mixed-use marina uses shown in Figure A-1 in the
16 Appendix to the Study as those terms are defined in this Chapter.

17
18 18.19.060 Fee imposed.

19 A. Any person who, after the effective date of this ordinance, seeks to
20 engage in residential or nonresidential development as defined in this Chapter on one or
21 more of the parcels identified in Figure A-1 in the Appendix to the Study by obtaining a
22 building permit is required to pay a Sensitive Coastal Resource Impact Fee in the manner
23 and amount as set forth in the then current fee-setting resolution. The Sensitive Coastal
24 Resource Impact fee imposed pursuant to this Chapter shall not apply to those projects
25 for which a Planning Department application for Conceptual or Site Plan Review has
26 been filed and deemed complete by the Department of Planning and Building by the
27 effective date of this Chapter.

28 B. No certificate of occupancy, temporary certificate of occupancy, final

1 inspection approval, as applicable, for the activities listed in Subsection A of this Section
2 shall be issued unless and until the Sensitive Coastal Resource Impact Fee required by
3 this Chapter has been paid to the City.

4
5 18.19.070 Calculation of Sensitive Coastal Resource Impact Fee.

6 A. The Director of Planning and Building shall calculate the amount of
7 the applicable Sensitive Coastal Resource Impact Fee due as specified in the then
8 current fee-setting resolution.

9 B. The Sensitive Coastal Resources Impact Fee applies to
10 development that results in a net increase in gross residential or nonresidential building
11 square footage.

12 C. The Director of Planning and Building shall calculate the amount of
13 the applicable Sensitive Coastal Resource Impact Fee due by:

14 1. Determining the gross building square footage for the
15 development project and multiplying the same by the Sensitive Coastal
16 Resource Impact Fee amount as established by the then current fee-setting
17 resolution;

18 2. For a development project that would result in the
19 demolition or elimination of then-existing residential or nonresidential
20 building space, the fee would be determined by calculating the gross
21 building square footage for the new construction and multiplying the same
22 by the Sensitive Coastal Resource Impact Fee amount as established by
23 the then current-fee setting resolution less a credit for the reduction or
24 eliminated residential or nonresidential gross building square footage which
25 is calculated by multiplying the eliminated building square footage by the
26 Sensitive Coastal Resource Impact Fee amount as established by the then
27 current-fee setting resolution;

28 3. The credit for reducing or eliminating residential or

1 nonresidential building square footage shall not exceed the amount of the
2 fee required for the new construction.

3
4 18.19.080 Payment of fee.

5 A. The City shall collect from the applicant the Sensitive Coastal
6 Resource Impact Fee prior to the issuance of a certificate of occupancy, temporary
7 certificate of occupancy, final inspection, 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 identified and
10 promptly transferred for deposit in the Sensitive Coastal Resource Impact Fee fund and
11 used solely for the purposes specified in this Chapter.

12
13 18.19.090 Use of funds.

14 A. Funds collected from the Sensitive Coastal Resource Impact Fee
15 shall be used to cover a limited set of activities as associated with an increase in
16 population near sensitive coastal resources attributable to new residential and
17 nonresidential construction and shall include:

18 1. The cost to conduct a baseline study to document the
19 state and function of the buffer area and adjacent wetlands;

20 2. Monitoring that is related to impacts of nearby
21 development (new residents and increased business patrons) such as
22 damage from pedestrians/hikers in the buffer and wetland areas, exposure
23 to non-native seeds from landscaping, lighting, and increased trash and
24 debris;

25 3. Periodic trash and debris removal from the buffer area
26 and adjacent wetlands; and

27 4. Administrative costs associated with the Sensitive
28 Coastal Resource Impact Fee program.

1 B. In the event that bonds or similar debt instruments are issued for
2 advanced provision of the activities for which Sensitive Coastal Resource Impact Fees
3 may be expended, impact fees may be used to pay debt service on such bonds or similar
4 debt instruments to the extent that the activities provided are of the type described in
5 Subsection A of this Section

6 C. Funds may be used to provide refunds as described in Section
7 18.19.100.

8
9 18.19.100 Refund.

10 A. Any applicant who has paid a Sensitive Coastal Resource Impact
11 Fee pursuant to this Chapter may apply for a full or partial refund of same, if, within one
12 (1) year after collection of the Sensitive Coastal Resource Impact Fee the development
13 project has been modified, pursuant to appropriate City ordinances and regulations,
14 resulting in a reduction in the gross building square footage or the applicability of an
15 exemption pursuant to Section 18.19.110 of this Chapter. The City shall retain a sum
16 equaling twenty percent (20%) of the impact fee paid by the applicant to offset the
17 administrative costs of refund. The applicant must submit an application for such a refund
18 in accordance with Chapter 3.48 of this Code. In no event shall a refund exceed the
19 amount of the Sensitive Coastal Resource Impact Fee actually paid.

20 B. Any funds collected pursuant to this chapter which remain
21 unexpended or uncommitted five or more years after their deposit may be refundable
22 pursuant to Government Code Section 66001(e) with interest accrued.

23
24 18.19.110 Exemptions and credits.

25 A. Exemptions. Any claim of exemption must be made no later than the
26 time of application for a building permit. The following shall be exempted from payment of
27 the Sensitive Coastal Resource Impact Fee:

28 1. Alterations or expansion of an existing residential

1 building where no additional gross residential square footage is added and
2 where the use is not changed;

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

6 3. Nonresidential Development: Construction or
7 occupancy of a new nonresidential building or structure or an addition to or
8 expansion of an existing nonresidential building or structure of three
9 thousand (3,000) gross square feet or less;

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

Housing Services Bureau shall be notified of pending transfers or purchases and give its approval of the purchaser's qualifying income status and purchase price, prior to the close of escrow. The City's Housing Services Bureau shall be notified of pending rentals and give its approval of proposed tenant's qualifying income status and rental rate, prior to the tenant's occupancy. Applicant or any successor-in-interest shall be required to provide annually, or as requested, the names of all tenants or purchasers, current rents, and income certification to ensure compliance. Voluntary removal of the housing restriction or violation of the restriction shall be enforced by the City's Housing Services Bureau and shall require the applicant or any successor-in-interest to pay the then applicable Sensitive Coastal Resource Impact Fee at the time of voluntary conversion or as imposed at the time of violation on the unit in violation, plus any attorneys' fees and costs of enforcement, if applicable.

5. Hospitals as that term is defined in Section 21 .15.1370 of this Code.

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

18.19.120 Appeals.

A. An applicant may appeal, by protest, any imposition of the Sensitive Coastal Resource Impact Fee by filing a notice of appeal with the City Clerk within ninety (90) days after the applicant pays the required fee.

B. A valid appeal by protest of the imposition of the Sensitive Coastal Resource Impact Fee shall meet all of the following requirements:

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

2. Serving written notice on the City including:

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

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

c. The name and address of the applicant;

d. The name and address of the property owner;

e. A description and location of the property;

f. The gross building square footage, by land use or dwelling unit type, as appropriate; and

g. The date of issuance of the building permit.

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

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

E. The burden of proof shall be on the applicant to establish that the applicant is not subject to the imposition of the Sensitive Coastal Resource Impact Fee pursuant to the express terms of this Chapter and applicable state law.

F. If the Sensitive Coastal Resource Impact Fee has been paid in full or if the notice of appeal is accompanied by a cash deposit, letter of credit, bond or other surety acceptable to the City Attorney in an amount equal to the Sensitive Coastal Resource Impact Fee calculated to be due, the application for the building permit shall be processed. The filing of a notice of appeal shall not stay the imposition or the collection of

1 the Sensitive Coastal Resource Impact Fee calculated by the City to be due unless
2 sufficient and acceptable surety has been provided.

3 G. Any petition for judicial review of the City Council's final decision
4 shall be made in accordance with applicable state law and pursuant to Section
5 18.19.130.

6
7 18.19.130 Judicial review.

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

12 B. Any judicial action or proceeding to attack, review, set aside or annul
13 the imposition or collection of a Sensitive Coastal Resource Impact Fee on a
14 development shall be preceded by a valid appeal by protest pursuant to Section
15 18.19.120 hereof and a final decision of the City Council pursuant thereto and shall be
16 filed and service of process effected within ninety (90) days after the hearing on appeal
17 regarding the imposition of a Sensitive Coastal Resource Impact Fee upon the
18 development.

19
20 18.19.140 Reporting, Findings and amendment procedures.

21 A. Within 180 days after the last day of each fiscal year, the Director of
22 the Department of Development Services shall evaluate progress in implementation of
23 the Sensitive Coastal Resource Impact Fee Program and shall prepare a report thereon
24 to the City Council in accordance with Government Code Section 66006 incorporating
25 among other things:

26 1. The infrastructure, services, including any baseline
27 study, commenced, purchased or completed utilizing monies from the
28 Sensitive Coastal Resource Impact Fee fund;

2. The amount of the fees collected, and the interest earned;

3. The amount of Sensitive Coastal Resource Impact Fees in the fund; and

4. Recommended changes to the Sensitive Coastal Resource Impact Fee, including but not necessarily limited to, changes in the Sensitive Coastal Resource Impact Fee Chapter or fee-setting resolution.

B. Based upon the reports and such other factors as the City Council deems relevant and applicable, the City Council may amend the ordinance codified in this Chapter or the fee-setting resolution implementing this Chapter. Changes to the Sensitive Coastal Resource Impact Fee rates or schedules may be made by amending the fee-setting resolution. Any change which increases the amount of the Sensitive Coastal Resource Impact Fee shall be adopted by the City Council only after a noticed public hearing. Nothing herein precludes the City Council or limits its discretion to amend the ordinance codified in this Chapter or the fee-setting resolution establishing Sensitive Coastal Resource Impact Fee rates or schedules at such other times as may be deemed necessary.

C Every five years, the City Council shall evaluate the Sensitive Coastal Resource Impact Fee program. The five-year report shall include findings with respect to that portion of Sensitive Coastal Resource Impact Fee fund remaining unexpended, whether committed or uncommitted pursuant to Government Code Section 66001, subdivision (d)(1) including, but not limited to:

1. The purpose to which the Fee is to be put;
2. Demonstration of a reasonable relationship between the fee and the purpose for which it is charged;
3. Identification of all sources and amounts of funding anticipated to complete incomplete improvements; and

1 4. Designation of the approximate dates on which the
2 additional funds sufficient for completing the improvements are expected to
3 be deposited in the Fund.

4
5 18.19.150 Effect of Sensitive Coastal Resource Impact Fee on zoning
6 and subdivision regulations.

7 This Chapter shall not affect, in any manner, the permissible use of
8 property, density/intensity of development, design and improvement standards and public
9 improvement requirements or any other aspect of the development of land or
10 construction of buildings, which may be imposed by the City pursuant to the City's zoning
11 regulations, subdivision regulations or other ordinances or regulations of the City, which
12 shall be operative and remain in full force and effect without limitation with respect to all
13 residential and nonresidential development.

14
15 18.19.160 Violation--Penalty.

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

20
21 18.19.170 Severability.

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

26
27 Section 3. The City Clerk shall certify to the passage of this ordinance by
28 the City Council and cause it to be posted in three (3) conspicuous places in the City of

1 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
2 Mayor.

3 I hereby certify that the foregoing ordinance was adopted by the City
4 Council of the City of Long Beach at its meeting of _____, 20____, by the
5 following vote:

6
7 Ayes: Councilmembers: _____
8 _____
9 _____
10 _____

11 Noes: Councilmembers: _____
12 _____

13 Absent: Councilmembers: _____
14 _____

15 Recusal(s): Councilmembers: _____
16 _____

17
18 _____
19 City Clerk

20 Approved: _____
21 (Date) Mayor

22
23
24
25
26
27
28