

ORDINANCE NO. 3156

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO,  
CALIFORNIA, ESTABLISHING THE DEVELOPMENT IMPACT FEE  
("DIF") DEFERRAL PROGRAM.

WHEREAS, on June 23, 2003, the City Council of the City of Ontario (the "City Council") adopted Resolution No. 2003-039 to establish policies for the implementation of the new and modified Development Impact Fees ("DIF"). Resolution No. 2003-039 requires the payment of DIF no more than five (5) days prior to the issuance of building permits; and

WHEREAS, on July 1, 2003, the City Council adopted Ordinance Nos. 2779 and 2780 to implement new and modified DIF in recognition of the need to finance adequate infrastructure and other public improvements and facilities made necessary by new development in the City of Ontario (the "City"); and

WHEREAS, during the recession of 2008, the City Council adopted Resolution Nos. 2008-035, 2008-078, 2009-031, 2009-032, 2010-102, 2011-072, 2012-087, and 2013-130, to establish a temporary Economic Stimulus Program for residential and non-residential development (the "DIF Deferral Program"), which provided for the temporary deferment of DIF until requests for final inspection; and

WHEREAS, the temporary DIF Deferral Program began on May 6, 2008, and expired on December 31, 2014; and

WHEREAS, the City Council recognizes the importance of encouraging continuing investments in the City's residential, commercial, and industrial development, throughout the City; and

WHEREAS, the City Council further recognizes the importance of providing for needed infrastructure that is made necessary by new development within the City; and

WHEREAS, the City Council determines that deferring the timing of DIF payments to the time of requests for final inspection adequately accomplishes the needs of obtaining funding for needed public infrastructure while providing developers with a mechanism to manage their cash flow by paying DIF at building final inspections; and

WHEREAS, a permanent DIF Deferral Program provides an option for developers to defer payment of certain DIF until the time of requests for a final inspection, contingent upon developer's execution of a deferral agreement with the City; and

WHEREAS, the City Council, as the City's governing body, has the authority to establish and modify policies for the implementation of the City's DIF Program; and

WHEREAS, City of Ontario Development Code Division 2.03 (Public Hearings) prescribes the manner in which public notification shall be provided and hearing procedures to be followed, and all such notifications and procedures have been completed; and

WHEREAS, on February 4, 2020, the City Council of the City of Ontario conducted a hearing to consider the Project and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

**SECTION 1. *DIF Deferral Program.*** The DIF Deferral Program shall apply to residential and non-residential development city-wide to provide developers the option to defer certain DIF.

**SECTION 2. *Limitations.*** The DIF Deferral Program shall be limited to only City DIF and any other fees assessed at building permit issuance, including fees assessed on behalf of other agencies, shall remain in full force and effect and not subject to deferment. The payment of DIF for residential and non-residential development may be deferred for all fee categories, except the Species, Habitat Conservation, and Open Space Mitigation fee. DIF for the Species, Habitat and Open Space Mitigation categories are excluded from the deferral option and shall continue to be due and payable upon the issuance of a grading permit. In no case will a certificate of occupancy be issued for any unit or building within the phase(s), unless and until all fees due to the City for such phase(s) have been paid. A final inspection shall not occur until the applicable DIF is paid in full by the developer.

**SECTION 3. *Residential Developments.*** For a developer of residential development, the determination of deferred DIF shall be assessed for the entire phase(s) included in the project development and identified in the DIF Deferral Agreement. Any deferred DIF shall be due and payable when the first unit within a phase(s) requests its final inspection, or at the end of the deferral period, whichever occurs first.

**SECTION 4. *Non-Residential Developments.*** For a developer of a non-residential development, the determination of deferred DIF shall be assessed for each building included within the phase(s) and identified in the DIF Deferral Agreement. Any deferred DIF shall be due and payable when the first building within the phase(s) requests its final inspection, or at the end of the deferral period, whichever occurs first.

**SECTION 5. *Payment of DIF.*** The deferred DIF shall become due and payable on: (1) the end of the deferral period of a maximum period of two (2) years from the effective date of the DIF Deferral Agreement or (2) the date a final inspection is requested for the first unit or building within the phase(s), whichever occurs first. The determination of the DIF shall be the DIF in effect at the time of payment, and not at the time of building permit issuance. Deferred fees are subject to change due to modifications in the DIF Program and application of DIF Credits.

**SECTION 6. *DIF Deferral Agreement.*** Prior to issuance of any building permit for construction of any residential unit or portion of a non-residential development for which any DIF are requested for deferral pursuant to this program, the City shall require the developer, as a condition prior to issuance of that first building permit, to execute a DIF Deferral Agreement (Attachment "A") to pay the DIF, or applicable portion thereof, prior to: (1) the end of the deferral period of a maximum period of two (2) years from the effective date of the DIF Deferral Agreement or (2) the date a final inspection is requested for the first unit or building within the phase(s), whichever occurs first. The obligation to pay the DIF shall inure to the benefit of, and be enforceable by, the City. The DIF Deferral Agreement shall contain a legal description of the property affected and shall be recorded in the San Bernardino County Recorder's Office. The City, in its sole and absolute discretion, may require that the DIF Deferral Agreement contain a provision, which provides that from the date of recordation, the agreement shall constitute a first priority lien for the payment of the DIF, which lien shall be enforceable against successors-in-interest to the property owner. The DIF Deferral Agreement shall be recorded in the grantor-grantee index in the name of the City as grantee and in the name of the property owner or lessee as grantor. In the event the City requires first priority lien status in the DIF Deferral Agreement, the City shall require an executed subordination agreement from any and all encumbrancers for value that the City Manager or designee deem necessary. The City shall record a release of the obligation, containing a legal description of the property, in the event the DIF obligation is paid in full. The DIF Deferral Agreement shall require the property owner to provide written notification to the City of the opening of any escrow for the sale of any portion of property for which the building permit was issued and to provide in the escrow instructions that the DIF shall be paid to the City from the sale proceeds in escrow prior to disbursing proceeds to the seller or any other party. Such agreement may, in the City Manager's discretion, also require the developer to provide security up to the amount of the deferred DIF. The DIF Deferral Agreement shall also provide that the developer agrees to indemnify, defend and hold harmless the City and its officials, officers, agents, and employees for any claims, causes of action or damages/costs arising from the City's deferral of DIF pursuant to this program. The City Manager shall be authorized to execute a standardized DIF Deferral Agreement, without further action of the City Council.

**SECTION 7. *Processing and Administration Fee.*** A processing and administration fee of seven thousand five hundred dollars (\$7,500) is hereby authorized to be collected at the time the agreement is executed. This fee is based upon the City's estimated costs to process and administer the individual agreements between the City and the participating developer and the costs of tracking and eventual collection of the deferred fees.

**SECTION 8. *Indemnification.*** The developer shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void, or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action, or proceeding, and the City of Ontario shall cooperate fully in the defense.

**SECTION 9. Custodian of Records.** The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

**SECTION 10. Severability.** If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**SECTION 11. Effective Date.** This Ordinance shall become effective 30 days following its adoption.

**SECTION 12. Publication and Posting.** The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within 15 days following the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of February 2020.

  
PAUL S. LEON, MAYOR

ATTEST:

  
SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:

  
COLE HUBER LLP  
CITY ATTORNEY



**ATTACHMENT A:**

**DEVELOPMENT IMPACT FEE "DIF"  
DEFERRAL AGREEMENT**

*(Sample Document follows this page)*

**ATTACHMENT A**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

CITY OF ONTARIO  
CITY CLERK/ RECORDS MANAGEMENT  
303 EAST "B" STREET  
ONTARIO, CA 91764

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Space above this line for Recorder's Use

Exempt from Fees Per Gov. Code § 6301

**DEVELOPMENT IMPACT FEE "DIF"  
DEFERRAL AGREEMENT**

**By and Between**

**City of Ontario,  
a municipal corporation**

**and**

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**("Owner")**

**\_\_\_\_\_ , 2020**

**San Bernardino County, California**

## DEVELOPMENT IMPACT FEE DEFERRAL AGREEMENT

This Development Impact Fee Deferral Agreement (the "Agreement") is made and entered into by and between the City of Ontario, a California municipal corporation ("City") and \_\_\_\_\_ ("Owner") collectively, the ("Parties") with reference to the following facts:

### RECITALS

- A. The recording of this document is for the benefit of the City to secure Owner's payment of Development Impact Fees ("DIF").
- B. Owner is the owner of that certain real property in the City of Ontario, County of San Bernardino, State of California, more particularly described on the attached Exhibit "A" (the "Property").
- C. Owner has requested the deferment of DIF on \_\_\_\_\_ permits/buildings (collectively the "building permits") within the Property.
- D. The building permits applicable to deferral are more particularly described on Exhibit "B" attached.
- E. Pursuant to the DIF Deferral Program, the City Manager may defer the payment of certain DIFs for a maximum period of two (2) years from the effective date of this Agreement, or until a final inspection is requested for the first building permit within the phase(s), whichever occurs first.

### AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. All the above recitals are true and correct and are fully incorporated into this Agreement by reference and made a part hereof.
- 2. City agrees to defer collection of the payment of the DIFs identified in Exhibit "B" for a maximum period of two (2) years from the effective date of this Agreement or until a final inspection is requested for the first building permit within the phase(s), whichever occurs first.
- 3. Owner shall pay a non-refundable administrative processing fee totaling Seven Thousand Five Hundred Dollars (\$7,500) to process this Agreement.
- 4. Owner, on behalf of itself and its successors and assigns, agrees to pay the DIFs on the building permits identified in Exhibit "B" with a cashiers/certified check concurrent with the request for final inspection for the first building permit within a phase(s) or within two (2) years from the effective date of this Agreement, whichever occurs first. A final inspection may not be scheduled until the DIFs for the building permits in Exhibit "B" are paid in full by the Owner.

5. For payment of DIFs at the time the building permits identified in Exhibit “B” become payable, the amount of the DIFs for the building permits shall be determined in accordance with the DIF schedule in effect at the time of payment.
6. This Agreement shall be recorded against the Property in the Office of the San Bernardino County Recorder and shall constitute a lien for the payment of the DIFs binding upon, and running with, the Property. If Owner sells all or any portion of the Property, Property shall not be released of any obligations under this Agreement relating to the Property or the portion of the Property which is being acquired. This Agreement shall be binding upon, and the benefits of this Agreement shall inure, to the Parties and all successors in interest to the Parties.
7. The burden of this Agreement shall be released from title to the Property upon full payment of the DIFs for the Building permits in Exhibit “B”. Within a reasonable time, following payment of the DIFs, the City shall execute a lien release releasing the burden of this Agreement from the title to the Property.
8. The person signing on behalf of Owner certifies that s/he can legally bind Owner and agrees to hold City harmless if it is later determined that such authority does not exist.
9. Owner agrees to indemnify, defend and hold harmless the City and its officials, officers, agents, and employees for any claims, causes of action or damages/costs arising from the City's deferral of DIF pursuant to this Agreement.
10. This Agreement shall be effective upon the date it is executed by the City Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Development Impact Fee Deferral Agreement as of the date below, the ("Effective Date").

**SIGNATURE PAGE  
TO DEVELOPMENT IMPACT FEE  
DEFERRAL AGREEMENT**

**"OWNER"**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Representative  
Date: \_\_\_\_\_

**"CITY"**

CITY OF ONTARIO

By: \_\_\_\_\_  
Scott Ochoa, City Manager  
Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
City Clerk, Ontario

**APPROVED AS TO FORM:  
COLE HUBER, LLP**

\_\_\_\_\_  
City Attorney

**ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
*Date* *Insert Name and Title of the Officer*

personally appeared \_\_\_\_\_  
*Name(s) of Signer(s)*

\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

*Place Notary Seal Above*

**ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_,  
*Date* *Insert Name and Title of the Officer*

personally appeared \_\_\_\_\_  
*Name(s) of Signer(s)*

\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
*Signature of Notary Public*

*Place Notary Seal Above*

**Exhibit "A"**  
**Legal Description**

**Exhibit “B”  
Permits/Buildings  
Subject to DIF Deferral <sup>(1)</sup>**

Tract/Parcel Number(s)	Lot/Phase Number(s)	Developer	Dwelling Type	Units
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(1) The deferred DIF shall become due and payable on: (a) the date that a final inspection of the first unit or building within the project phase(s) is requested; or (b) the date that is two [2] years following the effective date of the DIF Deferral Agreement, whichever occurs first. The determination of the DIF shall be the DIF in effect at the time of payment, and not at the time of building permit issuance. Deferred fees are subject to change due to modifications in the DIF Program and application of DIF Credits.