

**Meeting Date: 05/23/2023 (1)**

**ORDINANCE NO. 10841 (N.S.)**

**AN ORDINANCE REPEALING AND REENACTING SECTIONS 810.301 THROUGH 810.315 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES RELATED TO THE SAN DIEGO COUNTY FIRE MITIGATION FEE PROGRAM**

The Board of Supervisors of the County of San Diego ordains as follows:

**Section 1.** The Board of Supervisors finds and determines that it is necessary to repeal and replace the Fire Mitigation Fee Ordinance, Sections 810.301 through 810.315 of the San Diego County Code of Regulatory Ordinances. The primary intent of the ordinance is to continue the County's administration of a development impact fee program consistent with the Mitigation Fee Act, California Government Code Sections 66000 *et seq.*

**Section 2.** The Board of Supervisors hereby approves and adopts the Fire Mitigation Fee Update Nexus Study submitted on May 2, 2023.

**Section 3.** The Fire Mitigation Fee Ordinance, Sections 810.301 through 810.315 of the San Diego County Code of Regulatory Ordinances is hereby repealed and replaced with the following:

**SEC. 810.301. TITLE.**

This Chapter shall be known as the Fire Mitigation Fee Ordinance and may be cited as such.

**SEC. 810.302. DEFINITIONS.**

Whenever the following words are used in this Chapter, they shall have the meaning ascribed to them in this section.

**APPLICANT** means developer or person seeking a Development permit.

**BUILDING PERMIT** means a permit required by and issued pursuant to the Uniform Building Code.

**BUILDING OFFICIAL** means the Director of the County Department of Planning and Development Services, or any person appointed or hired by the Director to administer and enforce the County Building, Residential, Electrical, Plumbing, Mechanical, Energy Efficiency and Green Building Codes.

**CLERK** means the Clerk of the Board of Supervisors of the County of San Diego

**COUNTY** means the County of San Diego, State of California.

**DEVELOPMENT** means any construction for which a County Building Permit or other permit is required, as described in California Government Code § 66000 of the Mitigation Fee Act.

**FACILITIES** means any long-term capital Facilities and equipment used by a Fire Agency for fire suppression or emergency medical services, including station construction, station expansion or improvements, and fire or emergency medical apparatus.

**FIRE MITIGATION FEE or FMF** means the Fire Mitigation Fee established and authorized by this Chapter as a condition of approving Development for the purpose of acquiring, developing, or improving Facilities to serve the Development.

**FEE RATE TABLE(s)** means the FMF rates by category and any subsequent adjustments thereto made in accordance with the Mitigation Fee Act and this Chapter.

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**FIRE AGENCY** means any special district providing fire protection services within the unincorporated area of the County. FIRE AGENCY also includes the County when providing fire protection services within the jurisdictional boundaries of the San Diego County Fire Protection District.

**GENERAL PLAN** means the San Diego County General Plan as adopted by the Board of Supervisors in August 2011 and any subsequent amendments thereto.

**OTHER PERMIT(s)** means County major and minor use permits.

**PROGRAM ADMINISTRATOR** means the Director of the San Diego County Fire, designated by the Chief Administrative Officer to facilitate Annual Report review.

Cross reference(s)--Definitions, § 12.101 et seq.

**SEC. 810.303. PURPOSE AND FINDINGS.**

The purpose of this Chapter is to make provision for assessing and collecting a FMF pursuant to the authority granted by California Government Code Sections 66000 et seq. (also known as the Mitigation Fee Act), which authorizes a County to collect a FMF as a condition of project approval to defray all or a portion of the cost of public Facilities needed to accommodate a Development project.

Consistent with the Mitigation Fee Act, the Board of Supervisors of the County finds and declares as follows:

- (1) Purpose of Fee, Government Code § 66001(a)(1): In many areas of the unincorporated County, Development requires new or expanded Facilities to ensure adequate levels of fire protection and emergency medical service can be provided to the Development and community, consistent with the Safety Element of the General Plan. Where funding is not otherwise available, the FMF is intended to provide a method of financing these Facilities.
- (2) Use of Fees, Government Code § 66001(a)(2): All FMF levied on Development pursuant to this Chapter shall be used to acquire, develop, or improve Facilities within the unincorporated area of the County.
- (3) Relationship between use and type of project, Government Code § 66001(a)(3): All FMF levied on Development pursuant to this Chapter shall be used to ensure adequate Facilities are available to serve Development.
- (4) Relationship between need for the facility and type of project, Government Code § 66001(a)(4): Adequate Facilities must be available to serve new Development. All FMF levied on Development pursuant to this Chapter shall be used to finance Facilities needed to meet the demand caused by the Development.
- (5) Proportionality, Government Code § 66001(b): The FMF is determined using a calculation based on the actual cost of fire station construction that is applied at different rates depending on the fire risk of the type of construction. There is a reasonable relationship between the amount of the FMF and the cost of construction or expansion of Facilities and the acquisition of equipment attributable to new Development because the FMF is derived from the construction cost of fire station with rates depending on the type of construction as identified in the Uniform Building Code.

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- (6) **Public Welfare:** In many areas of the County, the funds for expansion or construction of fire Facilities and purchase of equipment necessitated by new Development are not available when the Development occurs, resulting in the potential for inadequate fire protection coverage for the new Development and the community. The imposition of FMF to fund the expansion or construction of fire Facilities and purchase of equipment is necessary in order to protect the public health, safety and welfare by ensuring fire protection and emergency medical services (EMS) continue to operate in accordance with the Safety Element of the General Plan.

**SEC. 810.304. PRIOR AGREEMENTS AND DEDICATION.**

Any agreement existing prior to the operative date of this Chapter between an Applicant for Development and a Fire Agency pertaining to the dedication of land or payment of FMF for Facilities to serve the property that is the subject of the application, or any portion thereof, shall satisfy the requirements of this Chapter.

If land, fire protection Facilities, or equipment have been dedicated or donated to, and accepted by, the Fire Agency, a credit for such land, fire protection Facilities, or equipment may be considered as satisfying the requirements of this Chapter. The amount of such credit shall be specified in a written agreement between the Development permit Applicant and the affected Fire Agency.

**SEC. 810.305. EXEMPTIONS AND REPLACEMENT OF DESTROYED STRUCTURES.**

- (a) The Building Official shall establish a list of Building Permit types that are exempt from the requirements of this Chapter because the Building Official finds they do not significantly add to the need for additional Facilities. The list shall include, but not be limited to, pools, fences and additions or alterations with a value of \$5,000 or less.
- (b) The requirements of this Chapter shall not apply to Development for governmental uses.
- (c) The requirements of this chapter shall not apply where an application for a Building Permit is filed for a replacement dwelling on the same parcel by the owner of the dwelling destroyed by fire or other calamity, provided that the application for a Building Permit to replace such dwelling is filed with the Building Official within one (1) year after destruction of the dwelling.

**SEC. 810.306. FMF PAYMENT.**

Upon issuance of Certificate of Occupancy, the Applicant shall pay to the County the percentage of the FMF prescribed by Fire Agency resolution, or shall present written evidence that the provisions of this Chapter have otherwise been satisfied with respect to the Development for which permits are sought.

The amount of such Fees shall be determined by the FMF standard in effect on the date of the payment of FMFs for an unexpired plan check.

When application is made for a new Building Permit following the expiration of a previously issued Building Permit for which FMFs were paid, the FMF payment shall not be required.

In the event the subsequent Development occurs with respect to property for which FMFs have been paid, additional FMFs shall be required only for additional square footage of Development which was not included in computing the prior FMF.

**SEC. 810.307. FMF ESTABLISHED**

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The maximum allowable fee rates (cost per square foot) summarized by fire agency and land use category below are adopted by action of the Board of Supervisors and shall be referenced for general calculation of the levied FMF. For the San Diego County Fire Protection District the residential rate shall be set at 50% of the maximum in Fiscal Year 2023-2024, 75% in Fiscal Year 2024-2025, and 100% starting in Fiscal Year 2025-2026. The Fiscal Year runs July 1 to June 30.

FIRE AGENCY	MAXIMUM FEE RATE BY LAND USE						
	(\$ per square foot)						
	RESIDENTIAL	COMMERCIAL / RETAIL	HOTEL	INDUSTRIAL	MEDICAL	OFFICE	AGRICULTURE
Alpine FPD	\$1.83	\$1.59	\$0.85	\$1.25	\$2.98	\$5.96	\$0.05
Bonita-Sunnyside FPD	\$1.46	\$1.27	\$0.68	\$1.01	\$2.39	\$4.78	\$0.04
Borrego Springs FPD	\$8.12	\$7.07	\$3.79	\$5.58	\$13.25	\$26.50	\$0.24
Deer Springs FPD	\$1.89	\$1.64	\$0.88	\$1.30	\$3.08	\$6.16	\$0.06
Lakeside FPD	\$1.33	\$1.16	\$0.62	\$0.91	\$2.17	\$4.34	\$0.04
North County FPD	\$1.05	\$0.91	\$0.49	\$0.72	\$1.71	\$3.42	\$0.03
Rancho Santa Fe FPD	\$2.48	\$2.15	\$1.15	\$1.70	\$4.04	\$8.08	\$0.07
Rincon Del Diablo MWD	\$0.95	\$0.83	\$0.44	\$0.65	\$1.55	\$3.10	\$0.03
San Diego County FPD	\$2.65	\$2.31	\$1.24	\$1.82	\$4.33	\$8.66	\$0.08
San Marcos FPD	\$0.90	\$0.78	\$0.42	\$0.62	\$1.46	\$2.93	\$0.03
San Miguel Consolidated FPD	\$1.47	\$1.28	\$0.69	\$1.01	\$2.40	\$4.80	\$0.04
Valley Center FPD	\$1.12	\$0.97	\$0.52	\$0.77	\$1.83	\$3.66	\$0.03
Vista FPD	\$0.80	\$0.70	\$0.37	\$0.55	\$1.31	\$2.61	\$0.02
KEY: FPD = Fire Protection District; MWD = Municipal Water District.							

**SEC 810.308. FMF ADJUSTMENT**

The FMF shall be adjusted annually on July 1st of each year based on the one-year change (from October to October) in the Los Angeles Construction Cost Index as determined by Engineering News Record

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published by McGraw Hill Publishing Company, or successor thereof. Annual adjustments to the FMF shall be automatic and shall not require further action by the Board of Supervisors.

**SEC. 810.309. ADMINISTRATIVE CHARGES.**

FMFs collected hereunder shall be held in trust by the County. Such FMFs shall be transferred quarterly to the Fire Agency serving the area from which the FMFs were collected.

The County shall retain any interest accrued during this period as reimbursement for its service and handling costs.

The County may include in an adopted fire district mitigation FMF a component that reflects the County's reasonable costs of administering the FMF and complying with all laws, ordinances and regulations related to the FMF.

The applicable fire district may include in a proposed fire district mitigation FMF a component that reflects the district's reasonable costs of administering the FMF and complying with all laws, ordinances and regulations related to the FMF.

**SEC. 810.310. REQUIRED ACTIONS OF PARTICIPATING FIRE AGENCIES**

This chapter shall become applicable to Development within the boundaries of a Fire Agency in full compliance with requirements in this Section when the following events occur:

- (a) At a noticed public hearing, the governing body of a Fire Agency shall annually adopt a resolution with the information below:
  - (1) The Fire Agency does not have existing fire protection Facilities and equipment that could be used to provide an adequate level of services to new Development within the Fire Agency's boundaries.
  - (2) The Fire Agency does not have sufficient funds available to construct additional Facilities from fund balances, capital facility funds, property tax sources, fire suppression assessments, or any other appropriate sources.
  - (3) The lack of fire protection Facilities and equipment to serve new Development would create a situation perilous to the public health and safety if Fire Mitigation Fees are not levied within the Fire Agency's boundaries.
  - (4) The annexation and plan check fees charged by the Fire Agency do not include a payment toward the costs to acquire, develop, or improve Facilities as a component of the fees.
  - (5) The Fire Agency requests that the County collect a specified percentage of the maximum allowable Fire Mitigation Fee rates on the Fire Agency's behalf from Applicants for Building Permits or other permits for Development within Fire Agency boundaries.
  - (6) Except as provided in Section 810.309, FMFs collected shall be used to expand the availability of capital Facilities and equipment to serve new Development with Fire Agency boundaries. FMFs shall not be used to address existing deficiencies, but where reasonably related to Development, may be used refurbish existing Facilities to maintain the existing level of service

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or achieve an adopted level of service that is consistent with the San Diego County General Plan.

- (7) The Fire Agency shall deposit all funds received from the County under this Chapter, and all interest subsequently accrued by the Fire Agency on these funds, in a separate account to be known as the "San Diego County Fire Mitigation Fee."
  - (8) The Fire Agency shall expend funds from said "San Diego County Fire Mitigation Fee" account only for those purposes of providing capital Facilities and equipment to serve new Development.
  - (9) The Fire Agency shall include a capital improvement plan indicating the approximate location, size, time of availability, and cost estimates for Facilities to be financed with the fee, in accordance with Government Code Section 66002.
  - (10) The Fire Agency shall defend, indemnify and hold harmless the County, its officers, officials, employees, agents and volunteers, from and against any and all demands, claims, actions, litigation, or other proceedings, liability, damages, and costs (including but not limited to attorney fees) that are based in whole or in part upon the levy, imposition, collection or payment of FMF, or the denial of a permit until the FMF is paid, excepting only matters that are based upon the County's gross negligence or willful misconduct.
- (b) The Fire Agency shall submit an Annual Report no later than August 31 of each year, to the Program Administrator. Said report shall include, but not be limited to, the following information required under Government Code 66006(b):
- (1) A brief description of the type of FMF.
  - (2) The amount of the FMF.
  - (3) The beginning and ending account balance.
  - (4) The amount of FMFs collected and interest earned.
  - (5) Identify each public improvement on which the FMFs were spent and the amount of the expenditure, including the total percentage of the cost of the improvement funded by the FMFs.
  - (6) Identify the approximate date by which construction of the public improvement will begin in the Fire Agency determines sufficient funds have been collected to complete financing on an incomplete public improvement.
  - (7) A description of each interfund transfer or loan.
  - (8) The amount of any refunds made pursuant to Government Code 66001(e).
- (c) For the fifth fiscal year following the first deposit into the Fire Agency's "San Diego County Fire Mitigation Fee" account and every five years thereafter, the Fire Agency shall make all of the

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following findings with respect to any cash portion of the FMFs remaining unexpended or uncommitted in the account:

- (1) Identify the purpose to which the fee is to be put;
  - (2) Demonstrate a reasonable relationship between the FMF and the purpose for which it was charged;
  - (3) Identify all sources and amounts of funding anticipated to complete financing all incomplete improvements; and
  - (4) Designate the approximate dates on which complete funding is expected to be deposited into the account.
  - (5) If all of these findings are not made, the Fire Agency shall refund, on a prorated basis, to the current record owner or owners of the Development projects for which the FMFs were paid the unexpended or uncommitted portion of the FMFs and any interest accrued by the Fire Agency for which need cannot be demonstrated.
- (d) The Fire Agency shall make available to the public on request its records which justify the basis for the FMF amount.
- (e) By June 30 of each year following the year of original adoption of a resolution pursuant to this Section 810.310, the Fire Agency shall submit to the County a copy of a new resolution adopted and approved, respectively, by the Fire Agency's governing body making the findings required in Section and identify the percentage of the Fire Mitigation Fee ceiling requested by the Fire Agency up to the maximum ceiling amount. This revision shall be effective the following July 1.

**SEC. 810.311. REPORTING**

Within 180 days after the last day of each fiscal year the Program Administrator or designee shall provide to the Board of Supervisors a report regarding each separate account or fund established pursuant to this article containing the information set forth in Government Code section 66006, subdivision (b).

At a noticed public hearing, the Board of Supervisors shall review the report and the FMF to determine whether the FMF amounts continue to be reasonably related to the impact of Development and whether the described public Facilities are still needed.

Commencing with the first fiscal year following the first receipt of any revenues from the Fire Mitigation Fees authorized and levied pursuant to the provisions of this Chapter, and every five years thereafter, the Board of Supervisors, following receipt of the Program Administrator's report, shall make the findings required by Government Code section 66001, subdivision (d) with respect to that portion of each fund remaining unexpended, or shall refund the moneys in such fund as provided in Government Code section 66001, subdivision (e).

**SEC. 810.312. USE OF FEES.**

All fees collected pursuant to this chapter and transferred to a fire agency, including any interest accrued, shall be used by the agency for the purpose of providing for capital facilities and equipment.

**SEC. 810.313. EXPIRATION OF AGREEMENT AND TERMINATION OF FEE COLLECTION.**

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If by June 30 of any year following the year of original adoption of a resolution pursuant to Section 810.310, the Fire Agency has not submitted a copy of a new resolution pursuant to Section 810.310, FMF collection shall terminate July 1 of said year.

If, at any time, the governing body of a Fire Agency submits a copy of a resolution to the Clerk requesting termination of fee collection, FMF collection shall terminate thirty (30) days from the date of receipt by the Clerk.

Each Fire Agency shall notify the County Building Official and Program Administrator of the effective date of its termination of FMF collection.

**Section 4.** This ordinance shall take effect and be in force sixty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against the same in a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY  
CLAUDIA G. SILVA  
BY: Mark Day, Deputy County Counsel



PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 23<sup>rd</sup> day of May 2023.



NORA VARGAS  
Chair, Board of Supervisors  
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Vargas, Anderson, Lawson-Remer, Desmond  
ABSENT: (District 4 Seat Vacant)

ATTEST my hand and the seal of the Board of Supervisors this 23<sup>rd</sup> day of May 2023.

ANDREW POTTER  
Clerk of the Board of Supervisors

By   
Nancy Vizcarra, Deputy



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