

ORDINANCE NO. 2024-30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, REPEALING AND REPLACING CHAPTER 14.33 (WATER AND SEWER CAPITAL IMPROVEMENT FEE) TO THE NEWPORT BEACH MUNICIPAL CODE AUTHORIZING COLLECTION OF DEVELOPMENT IMPACT FEES FOR WATER AND SEWER SERVICE FACILITIES

WHEREAS, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, cities may apply fees for proposed developments to cover the cost of public facilities by way of its police power as codified in the California Constitution Article XI Section 7;

WHEREAS, California Government Code Section 66000 *et seq.* (“Mitigation Fee Act”) authorizes the City to collect fees in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project;

WHEREAS, development impact fees must be supported by a nexus study which calculates the purpose of the fee, the use to which it will be put, the relationship between the fee’s use and the development, and establish the need for the fee pursuant to the Mitigation Fee Act;

WHEREAS, the Community Development Department commissioned a development impact fee nexus study with Willdan Financial Services;

WHEREAS, the City’s 6th Cycle Housing Element projects an increase in the population, residential dwelling units, and employment in Newport Beach;

WHEREAS, this future residential and nonresidential growth will create additional demand on the City’s infrastructure for water and sewer service facilities;

WHEREAS, the City's current system consists of water and sewer lines and infrastructure to serve the community;

WHEREAS, Chapter 14.33 (Water and Sewer Capital Improvement Fee) authorizes the City to collect water system impact fees and sewage collection and treatment facilities impact fees to pay for the cost of improvements to the water and sewer system necessitated by new development; and

WHEREAS, a duly noticed public hearing was held by the City Council on November 12, 2024, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and the Mitigation Fee Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Chapter 14.33 (Water and Sewer Capital Improvement Fee) of the Newport Beach Municipal Code is hereby repealed and replaced with Exhibit "A," which is attached hereto and incorporated by reference.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Proposed

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 12th day of November, 2024, and adopted on the 10th day of December, 2024, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

Attachment: Exhibit A – Chapter 14.33 (Water and Sewer Capital Improvement Fee)

Exhibit A

Chapter 14.33

WATER AND SEWER CAPITAL IMPROVEMENT FEE

Sections:

- 14.33.010 Purpose.
- 14.33.020 Definitions.
- 14.33.030 Established.
- 14.33.040 Use.
- 14.33.050 Developer construction.
- 14.33.060 Adjustments.

14.33.010 Purpose.

- A. To implement the goals and objectives of the capital improvement program for facilities and equipment of the City of Newport Beach, and to mitigate the impacts upon the City's sewage collection and treatment facilities caused by new development in the City, certain public facilities and equipment must be constructed and/or improvements made. The public facilities and equipment are specifically identified in the City's capital improvement program for facilities and equipment as adopted by the City Council and as amended from time to time. The list of water and sewage collection and treatment facilities and equipment may be added to or deleted from the approved program. The City Council has determined that a development impact fee is needed to finance these public improvements and to pay for the development's fair share of the costs of these improvements.
- B. In establishing the fee described in this chapter, the City Council has found the fee to be consistent with its general plan and, pursuant to Govt. Code Section 65913.2, has considered the effects of the fee with respect to the City's housing needs as established in the Housing Element of the General Plan.

14.33.020 Definitions.

In this chapter, unless the context otherwise requires:

"Cost of improvements" means all costs related to acquisition, construction, repair and financing, but does not include costs of routine maintenance.

"New development" means any residential or nonresidential (nonresidential includes commercial and industrial) construction project except as specifically exempted in this chapter or by resolution establishing the fee.

"Sewage collection and treatment facilities" means capital improvements related to the collection, treatment and disposal of sewage including but not limited to collection systems and sewage treatment plant facilities.

"Water system" means capital improvements related to the distribution, treatment and storage of potable water for public health and safety.

14.33.030 Established.

- A. A water system impact fee is established for development within the City to pay for the City's water distribution, collection and treatment facilities as shown in the adopted capital improvement program for facilities and equipment.
- B. A sewage collection and treatment facilities impact fee is established for development within the City to pay for the sewage collection system and sewage treatment plant improvements and expansion as shown in the adopted capital improvement program for facilities and equipment.
- C. The City Council shall, by resolution, set forth the specific amount of the fee, describe the benefit and impact area on which the development fee is imposed, list the specific public improvements to be financed, describe the estimated cost of these facilities, describe the reasonable relationship between this fee and the various types of new developments and set forth time for payment. On an annual basis, the City Council shall review this fee to determine whether the fee amounts are reasonably related to the impacts of developments and whether the described public facilities are still needed.

14.33.040 Use.

The revenues raised by payment of this fee shall be placed in a separate and special account and such revenues, along with any interest earnings on that account, shall be used solely to:

- A. Pay for the City's future facilities described in the resolution enacted pursuant to this chapter, or to reimburse the City for those described or listed facilities constructed by the City with funds advanced by the City from other sources, or
- B. Reimburse developers who have been required or permitted by this section, to install such listed facilities which are oversized with supplemental size, length or capacity.

14.33.050 Developer construction.

- A. Whenever a developer is required, as a condition of approval of a development permit, to construct a public facility described in a resolution adopted pursuant to this section which facility is determined by the City to have supplemental size, length or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the

facilities network, a reimbursement agreement with the developer and a credit against the fee, which would otherwise be charged pursuant to the ordinance codified in this section on the development project, shall be offered to the developer.

- B. The reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the development.

14.33.060 Adjustments.

- A. A developer of any new development subject to the fees described in this chapter may apply to the City Council for a reduction or adjustment to that fee(s), or a waiver of that fee(s), based upon the absence of any reasonable relationship or nexus between the sewage collection and treatment facilities and/or water system impacts of that development and either the amount of the fee charged or the type of facilities to be financed.
- B. A separate application shall be filed for each adjustment request made pursuant to this section. Such application shall be made on a form provided by the City Clerk and shall be filed with the City Clerk not later than:
 - 1. Thirty (30) days prior to the first public hearing on the discretionary permit application for the development project, or
 - 2. If no discretionary permit application is required, within thirty (30) days of filing for a building permit. A building permit for any phase of construction (including grading, demolition, or new construction) shall not be issued until a determination of the base fees is final.
- C. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The burden of proof shall be on the applicant to establish that the applicant is not subject to the imposition of the full development impact fee(s) pursuant to the applicable development impact fee ordinance and applicable state law.
- D. The City Council shall consider the application at the public hearing on the permit application or at a separate hearing held within sixty (60) days after the filing of the fee adjustment application, whichever is later. The decision of the City Council shall be final.
- E. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of the fee.