

Article 8: Housing

Division 4: Interim School Facilities Financing Ordinance

*(“Interim School Facilities Financing Ordinance”
added 11-18-1985 by O-16541 N.S.)*

§98.0401 Title

This Division shall be known as the “Interim School Facilities Financing Ordinance.”
(“Title” added 11-18-1985 by O-16541 N.S.)

§98.0402 Findings

The City Council finds and declares as follows:

- (a) Adequate public school facilities should be available for school-age children residing in new residential developments.
- (b) New public and private residential developments may require the expansion of existing schools or the construction of new school facilities.
- (c) In many areas of the city, the funds for construction of new school facilities are not available when new residential development occurs resulting in the overcrowding of existing schools.
- (d) New residential developments frequently cause conditions of overcrowding in existing school facilities which cannot be alleviated under existing law within a reasonable period of time.
- (e) For the reasons recited above, new and improved methods of financing for interim school facilities necessitated by new residential developments are urgently needed in the city.
(“Findings” added 11-18-1985 by O-16541 N.S.)

§98.0403 Purpose and Intent

This Division is intended to provide authority whereby the City, affected school districts, and applicants for residential developments may undertake such reasonable steps as the City Council determines necessary to alleviate overcrowding of school facilities.

(“Purpose and Intent” added 11-18-1985 by O-16541 N.S.)

§98.0404 Authority–Conflict

This Division is adopted pursuant to the provisions of Chapter 4.7 (commencing with Section 65970) of Division 1 of Title 7 of the California Government Code. In the case of any conflict between the provisions of this Division and those of Chapter 4.7, the latter shall prevail.

(“*Authority–Conflict*” added 11–18–1985 by O–16541 N.S.)

§98.0405 Regulations

The City Council may, by resolution, issue regulations to establish procedures, interpretations, and policy directions for the administration of this Division.

(“*Regulations*” added 11–18–1985 by O–16541 N.S.)

§98.0406 Implementation Date

This ordinance shall have been in effect for a period of 30 days prior to the implementation of the dedication or fee requirements provided herein.

(“*Implementation Date*” added 11–18–1985 by O–16541 N.S.)

§98.0407 General Plan

The Progress Guide and General Plan of The City of San Diego designates the location of existing and future public schools. The school facilities to be provided from the land to be dedicated or the fees to be paid, or both, required by this Division shall be consistent with that plan.

(“*General Plan*” added 11–18–1985 by O–16541 N.S.)

§98.0408 Conditions of Overcrowding—Defined

“Conditions of overcrowding” means that the total enrollment of a school, including enrollment from proposed residential development, exceeds the capacity of the school as determined by the governing body of the school district.

(“*Conditions of Overcrowding—Defined*” added 11–18–1985 by O–16541 N.S.)

§98.0409 Dwelling Unit—Defined

“Dwelling Unit” means a building, or portion thereof, or a mobile home designed for residential occupancy by one or more persons living together as a domestic unit.

(“*Dwelling Unit—Defined*” added 11–18–1985 by O–16541 N.S.)

§98.0410 Interim Facilities— Defined

For the purposes of Section 98.0419, “interim facilities” shall include “classroom facilities,” “classroom and related facilities,” and “elementary, junior high, or high school facilities,” and shall be limited to the following:

- (a) Temporary classrooms not constructed with permanent foundations and defined as structures containing one or more rooms, each of which is designed, intended, and equipped for use as a place for formal instruction of pupils by a teacher in a school.
- (b) Temporary classroom toilet facilities not constructed with permanent foundations.
- (c) Reasonable site preparation and installation of temporary classrooms.
(“Interim Facilities— Defined” added 11-18-1985 by O-16541 N.S.)

§98.0411 Residential Development— Defined

“Residential development” means a project containing one or more dwelling units, including mobile homes.

(“Residential Development— Defined” added 11-18-1985 by O-16541 N.S.)

§98.0412 Notice to School Districts

The City shall notify affected school districts of any application for residential development proposed for location within their boundaries.

(“Notice to School Districts” added 11-18-1985 by O-16541 N.S.)

§98.0413 School District Findings

The governing body of a school district which operates an elementary, junior high, or senior high school in the city shall notify the City Council if the governing body makes both of the following findings supported by clear and convincing evidence:

- (a) That conditions of overcrowding exist in one or more attendance areas within the district which impair the normal functioning of educational programs, including the reasons for the existence of those conditions; and

- (b) That all reasonable methods of mitigating the conditions of overcrowding have been evaluated and no feasible methods for relieving those conditions exist.

(*"School District Findings" added 11-18-1985 by O-16541 N.S.*)

§98.0414 Notice of Findings

The notice of findings sent by a school district to the City Council shall specify:

- (a) The findings listed in Section 98.0413, together with the supporting documentation;
- (b) The methods for mitigating conditions of overcrowding considered by the district, and the reason why each was found infeasible to relieve the overcrowded conditions;
- (c) The precise geographic boundaries of the overcrowded attendance area or areas; and
- (d) Such other information as may be requested by the City Council.

(*"Notice of Findings" added 11-18-1985 by O-16541 N.S.*)

§98.0415 Establishment of Impacted Attendance Area

Upon receipt of a notice of findings complying with Section 98.0414, the City Council shall review those findings for the purpose of determining whether it concurs. If the City Council concurs in those findings, it shall, by resolution, establish an Impacted Attendance Area covering the area designated by the school district. Once such an area is established and until it is terminated in accordance with Section 98.0431, the provisions of Section 98.0416 shall be applicable to the issuances of residential building permits within the Impacted Attendance Area.

(*"Establishment of Impacted Attendance Area" added 11-18-1985 by O-16541 N.S.*)

§98.0416 Restriction on Approval of Residential Developments

Except as provided in Section 98.0417, no building permit shall be issued for residential development within an Impacted Attendance Area established pursuant to this Division, unless one of the following findings is made:

- (a) That action has been taken pursuant to this Division to provide for the dedication of land, the payment of fees in lieu thereof, or a combination of both, to mitigate the conditions of overcrowding;

- (b) That pursuant to Council Policy 600–22, “AVAILABILITY OF SCHOOLS,” the applicant for the proposed residential development has entered into an agreement with the school district to mitigate the conditions of overcrowding; or
- (c) That there are specific overriding fiscal, economic, social, or environmental factors which in the judgment of the City Council would benefit the City, thereby justifying the approval of a residential development otherwise subject to the provisions of this Division.

(“Restriction on Approval of Residential Developments” added 11–18–1985 by O–16541 N.S.)

§98.0417 Exemptions

A residential development shall be exempt from the requirements of this Division when it consists only of one or more of the following:

- (a) The modification or remodeling of an existing legally-established dwelling unit or units where no additional dwelling units are created.
- (b) The rebuilding of a legally-established dwelling unit or units destroyed or damaged by fire, flood, explosion, act of God or other accident or catastrophe.
- (c) The rebuilding of an historical building or buildings designated as such by the City.
- (d) The conversion of an existing apartment building or buildings into a condominium where no additional dwelling units are created.
- (e) A residential complex which, through special use permit, is designated and restricted for senior citizens’ housing.

(“Exemptions” added 11–18–1985 by O–16541 N.S.)

§98.0418 Land Dedication and Fee Schedule

The schedule for the amount of dedicated land or fees to be required pursuant to this Division shall be determined by the City Council and set by resolution. The governing board of each school district where a determination has been made pursuant to Section 98.0413 that conditions of overcrowding exist shall recommend a schedule for their attendance areas to the City Council. The district's recommendation and the facts supporting it shall be transmitted to the City Council concurrently with the notice specified in Section 98.0414. The schedule shall be based on the cost per pupil to provide an acceptable school facility, prorated on the basis of the pupil yield for the type or size of housing within the attendance area. The schedule may include an appropriate factor which can be applied annually to reflect the anticipated rate of inflation. The factor shall be adjusted from time to time to reflect the actual inflation rate. The schedule established by the City Council shall, until revised, be used by the school district where dedications of land and/or payment of fees are required pursuant to this Division.

(*"Land Dedication and Fee Schedule"* added 11-18-1985 by O-16541 N.S.)

§98.0419 Requirement of Dedications and/or Fees

- (a) For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 98.0415, and notwithstanding Section 66478 of the California Government Code, the City may require the dedication of land, the payment of fees in lieu thereof, or a combination of both, for classroom and related facilities for elementary, junior high, or senior high schools as a condition to the approval of residential developments.
- (b) The location and amount of land to be dedicated or amount of fees to be paid, or both, shall bear a reasonable relationship and will be limited to the needs of the community for interim elementary, junior high, or senior high school facilities and shall be reasonably related and limited to the need for schools caused by the proposed development. However, the value of the land to be dedicated or the amount of fees to be paid, or both, shall not exceed the amount necessary to make five annual lease payments for the interim facilities.
- (c) In lieu of the dedication of land or the payment of fees, or both, the applicant for a residential development may, at his or her option and at his or her expense, provide interim facilities, owned or controlled by the applicant, acceptable to and at the place designated by the school district, and at the conclusion of the fifth school year the applicant shall, at his or her expense, remove the interim facilities from that place.

- (d) Only the payment of fees shall be required in residential developments containing 50 dwelling units or less.
(“Requirement of Dedications and/or Fees” added 11-18-1985 by O-16541 N.S.)

§98.0420 Notice to Applicant

Upon receipt of a building permit application for residential development located 101.0201 within an Impacted Attendance Area, the Development Services Department shall inform the applicant of the requirements of this Division. It shall be the applicant’s responsibility to contact the appropriate school districts to secure the required clearance.

(Amended 7-25-1994 by O-18088 N.S.)

§98.0421 Notice to School Districts

Upon receipt of a building permit application for residential development located within an Impacted Attendance Area, the Development Services Department shall notify the affected school districts thereof. The notification shall be made at least 30 days prior to the issuance of a building permit for the proposed development.

(Amended 7-25-1994 by O-18088 N.S.)

§98.0422 School District Determination

- (a) Within 30 days of receipt of the notice provided under Section 98.0421, the school district shall determine whether a dedication of land within the proposed development, payment of fees in lieu thereof, or a combination of both, should be required pursuant to this Division. When the district has either received or accepted an offer to receive from the applicant for the proposed residential development the required dedication of land or payment of fees, or both, the district shall so inform the City Development Services Department in writing.
- (b) If the school district, pursuant to Council Policy 600-22, “AVAILABILITY OF SCHOOLS,” had previously entered into an agreement with the applicant for the proposed residential development to mitigate conditions of overcrowding within the attendance area covered by the application or to eliminate the need to provide school facilities, the district shall within 30 days of receipt of the notice provided under Section 98.0421 so inform the City Development Services Department in writing. Once the district and the applicant have entered into such an agreement, no additional dedication of land or payment of fees, or both shall be required pursuant to this Division.
- (Amended 7-25-1994 by O-18088 N.S.)*

§98.0423 Schedule for Use of Land or Fees

Following the establishment of an Impacted Attendance Area, the school district shall submit to the City Manager a schedule specifying how it will use the land or fees, or both, to relieve the conditions of overcrowding. The schedule shall include the school sites to be used, the classroom facilities to be made available, and the times when those facilities will be available. If the district cannot meet the schedule, it shall submit modifications to the City Manager and the reasons for the modifications. The City Manager shall make a finding that the facilities to be provided from the fees to be paid or the land to be dedicated, or both, are consistent with the Progress Guide and General Plan of The City of San Diego.

(“Schedule for Use of Land or Fees” added 11-18-1985 by O-16541 N.S.)

§98.0424 Land Dedication

When land is to be dedicated, the dedication or an offer for dedication shall be made to and accepted by the school district prior to the issuance of a building permit for the proposed development. Dedicated land which subsequently is determined by the district to be unsuitable or unnecessary for school facilities may be sold and the funds derived therefrom shall be used in accordances with this Division.

(“Land Dedication” added 11-18-1985 by O-16541 N.S.)

§98.0425 Fee Payment

When fees are to be paid, the payment or an offer for payment shall be made to and accepted by the school district prior to the issuance of a building permit for the proposed development.

(“Free Payment” added 11-18-1985 by O-16541 N.S.)

(Retitled to “Fee Payment” and amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§98.0426 Use of Land or Fees

The land or fees, or both, received by a school district pursuant to this Division shall be used only for the purpose of providing interim elementary, junior high, or senior high school classroom and related facilities within the Impacted Attendance Area from which the land or fees were collected.

(“*Use of Land or Fees*” added 11–18–1985 by O–16541 N.S.)

§98.0427 Use of Fees for Local Match Requirement

Whenever a school district has received approval under the State School Building Lease–Purchase Law of 1976 (Chapter 22 commencing with Section 17700 of the California Education Code) of a school project to be constructed in an attendance area where fees have been collected pursuant to this Division all or a portion of the fees so collected for interim facilities may be used by the district to provide its ten percent of the project as required by item (1) of Section 17761 of the California Education Code. Nothing in this section shall increase the amount of fees that would otherwise be collected pursuant to this Division.

(“*Use of Fees for Local Match Requirement*” added 11–18–1985 by O–16541 N.S.)

§98.0428 Use of Value of Land for Local Match Requirement

Whenever a school district has received approval under the State School Building Lease–Purchase Law of 1976 (Chapter 22 commencing with Section 17700 of the California Education Code) of a school project to be constructed in an attendance area where land has been received pursuant to this Division, the district may use the fair market value of the land to provide all or a portion of its ten percent of the school project as required by item (1) of subdivision (a) of Section 17761 of the California Education Code. In order to use the value of land to meet the ten percent match requirement, the district shall construct the capital outlay project on the land used to make the match, and shall provide the full ten percent of the project cost at one time as provided in item (1) of subdivision (a) of Section 17761 of the California Education Code.

(“*Use of Value of Land for Local Match Requirement*” added 11–18–1985 by O–16541 N.S.)

§98.0429 Limits Upon Receipt of State School Construction Apportionment

One year after receipt of an apportionment pursuant to the State School Building Lease–Purchase Law of 1976 (Chapter 22 commencing with Section 17700 of the California Education Code) for the construction of a school, the City shall not be permitted thereafter, pursuant to this Division or any other school facilities financing arrangement the district may have with builders of residential development, to levy any fee or to require the dedication of any land within the attendance area of the school for which the apportionment was received. However, any time after receipt of the apportionment there may be a determination of overcrowding pursuant to Section 98.0415, if there is the further finding that (1) during the period of construction additional overcrowding would occur from continued residential development, and (2) that any fee levied and any required dedication of land levied after the receipt of the construction apportionment can be used to avoid the additional overcrowding prior to the school being available for use by the district. Any amounts of fees collected or land dedicated after the receipt of the construction apportionment and not used to avoid overcrowding shall be returned to the person who paid the fee or made the land dedication.

(“Limits Upon Receipt of State School Construction Apportionment” added 11–18–1985 by O–16541 N.S.)

§98.0430 Fund Accounts and Reports

Any school district receiving funds pursuant to this Division shall maintain a separate account for any fees paid, and shall file a report with the City Council on the balance in the account at the end of the previous fiscal year; the facilities leased, purchased, or constructed during the previous fiscal year; and the dedication of land during the previous fiscal year. The report shall also identify any apportionment of funds received by the district pursuant to the State School Building Lease–Purchase Law of 1976. In addition, the report shall specify which attendance areas will continue to be overcrowded when the fall term begins and where conditions of overcrowding will no longer exist. The report shall be filed by October 15 of each year and shall be filed more frequently at the request of the City Council. The City Council may approve a 30–day extension for the filing of the report in the case of extenuating circumstances, as determined by the City Council. During the time that the report has not been filed in the manner prescribed in this section, there shall be a waiver of any performance of the payment of fees or the dedication of land.

(“Fund Accounts and Reports” added 11–18–1985 by O–16541 N.S.)

§98.0431 Termination of Fee and Dedication Requirements

When it is determined by the City Council, in consultation with the school district, that conditions of overcrowding no longer exist in an attendance area, the City and school district shall cease levying any fee or requiring the dedication of any land for that area pursuant to this Division. Action under this section shall not affect the validity of conditions already imposed for levy of fees and dedications of land, and such conditions shall remain binding.

(“Termination of Fee and Dedication Requirements” added 11-18-1985 by O-16541 N.S.)

§98.0432 Refunds

If a residential development approval is vacated or voided prior to use of the fees and/or land by the school district and if the applicant so requests within 60 calendar days of the development being vacated or voided, the governing board of the school district shall order the fees and/or land returned to the person who paid the fees or made the land dedication.

(“Refunds” added 11-18-1985 by O-16541 N.S.)