[Planning Code - Transit Impact Development Fee Increase and Updates]

Ordinance amending the San Francisco Planning Code, Article 4, by: 1) revising and making technical corrections to specified definitions in Section 401 relating to the Transit Impact Development Fee (TIDF); 2) amending Sections 402, 408, 411 through 411.5, 411.7, and 411.8 and adding a new Section 411.9 to increase TIDF rates, revise exemptions and credits, and clarify TIDF implementation and collection; and 3) making environmental findings, Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings. The Board of Supervisors of the City and County of San Francisco hereby finds and determines that:

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 120523 and is incorporated herein by reference.

(b) On July 19, 2012, the Planning Commission, in Resolution No. 18667 approved this legislation, recommended it for adoption by the Board of Supervisors, and adopted findings that it will serve the public necessity, convenience and welfare. Pursuant to Planning Code Section 302, the Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. 120523, and is incorporated by

reference herein.

(c) In Resolution No. 18667, the Planning Commission adopted findings that this legislation is consistent, on balance, with the City's General Plan and the eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own.

Section 2. The San Francisco Planning Code is hereby amended by amending, adding and deleting the following definitions to Section 401 and codifying the amended and added definitions in correct alphabetical sequence among the definitions in Section 401:

SEC. 401. DEFINITIONS.

"Base service standard." The relationship between revenue service hours offered by the Municipal Railway and the number of automobile and transit trips estimated to be generated by certain non-residential uses, expressed as a ratio where the numerator equals the average daily revenue service hours offered by MUNI and the denominator equals the daily automobile and transit trips generated by non-residential land uses as estimated by the TIDF Study*, the TIDF Update Report*, or *as* updated under Section ~~*411.5*~~*410* of this Article.

Cultural/Institution/Education (CIE)." An economic activity category subject to the TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and (i) and 217(f)-(i) of this Code; child care facilities *as defined in Sections 209.3 (e) and (f)*; museums and zoos; and community facilities, as defined in Sections 209.4 and 221(a)-(c) of this Code.

~~*"Development under the TIDF." Any new construction, or addition to or conversion of an existing structure under a building or site permit issued on or after September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the case of mixed use development that includes residential development, the term "new development" shall refer to only the non-residential portion of such development. "Existing structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.*~~

"Director of Transportation." The Director of Transportation of the MTA or his or her designee(s).

"Gross floor area." The total area of each floor within the building's exterior walls, as defined in Section 102.9~~*(b)(12)*~~ of this Code*, except that for the purposes of determining the applicability of the TIDF, the exclusion from this definition set forth in Section 102.9(b)(12) shall not apply* .

~~*"MTA Director." The Director of MTA or his or her designee.*~~

"Medical and Health Services." An economic activity category under the TIDF that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and 217(a) of this Code; ~~*animal services, as defined in Section 224(a) and (b) of this Code;*~~ and social and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

"Museum." A permanent institution open to the public, which acquires, conserves, researches, communicates and exhibits the heritage of humanity or the environment.

~~*"New development." Under the TIDF, any new construction, or addition to or conversion of an existing structure under a building or site permit issued on or after September 4, 2004 that results in 3,000 gross square feet or more of a use covered by the TIDF. In the case of mixed use development that includes residential development, the term "new development" shall refer to only the non-residential portion of such development. "Existing structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.*~~

"PDR use." ~~*Space within any structure or portion thereof intended or primarily suitable for or accessory to the operation, of*~~ *An economic activity category under the TIDF that includes, but is not limited to,* uses defined in San Francisco Planning Code Sections 220, 222, 223, 224, 225, 226, 227(a), 227(b), and 227(p), regardless of the zoning district that the use is located in.

"Retail/entertainment." An economic activity category under the TIDF that includes, but is not

limited to, a retail use; an entertainment use; *and* massage establishments, as defined in Section 218.1 of this Code~~*; laundering, and cleaning and pressing, as defined in Section 220 of this Code*~~.

"TIDF Study." The study commissioned by the San Francisco Planning Department and performed by Nelson/Nygaard Associates entitled "Transit Impact Development Fee Analysis - Final Report," dated May 2001, including all the Technical Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained in Board of Supervisors File No. 040141.

"TIDF Update Report." The study commissioned by MTA and performed by Cambridge Systematics, Inc. and Urban Economics entitled "Transit Impact Development Fee Update Draft Final Report," dated February, 2011, and contained in Board of Supervisors File No. 120523.

"Total developable site area." That part of the site that can be feasibly developed as residential development, excluding land already substantially developed, parks, required open spaces, streets, alleys, walkways or other public infrastructure.

"Trip generation rate." The total number of automobile and Municipal Railway trips generated for each 1,000 square feet of development in a particular economic activity category as established in the TIDF Study, *the 2011 TIDF update report,* or pursuant to the five-year review process established in Section ~~*411.5*~~*410* of this Article.

Section 3. The San Francisco Planning Code is hereby amended by amending Section 402(a) to read as follows:

SEC. 402. PROCEDURE FOR PAYMENT AND COLLECTION OF DEVELOPMENT FEES.

(a) Collection by the Development Fee Collection Unit. *Except as otherwise authorized in Section 411.9, all*~~*All*~~ development impact and in-lieu fees authorized by this Code shall be

collected by the Development Fee Collection Unit at DBI in accordance with Section 107A.13 of the San Francisco Building Code.

Section 4. The San Francisco Planning Code is hereby amended by amending Section 408 to read as follows:

SEC. 408. LIEN PROCEEDINGS.

(a) Except in the case of a project for which MTA is responsible for the determination and collection of the TIDF under Section 411.9(d) of this Article, if a first construction document or first certificate of occupancy, whichever applies, is~~DBI~~ inadvertently or mistakenly ~~*issues*~~*issued* ~~*the first construction document or first certificate of occupancy, whichever applies,*~~ prior to the project sponsor paying all development fees due and owing, or prior to the sponsor satisfying any development impact requirement, DBI shall institute lien proceedings to recover the development fee or fees, plus interest and any Development Fee Deferral Surcharge, under Section 107A.13.15 of the San Francisco Building Code.

(b) (1) Where MTA is responsible for determination and collection of the TIDF under Section 411.9(d) of this Article, MTA has made a final determination of TIDF due under that Section , and the amount due from the project sponsor remains unpaid following 30 days from the date of mailing of the additional notice of payment due under that Section, MTA may initiate lien proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the fee that is due, including interest at the rate of one and one-half percent per month or fraction thereof on the amount of unpaid fee, a lien against all parcels used for the development project.

(2) MTA shall send all notices required by Article XX to the owner or owners of the property and to the project sponsor if different from the owner. MTA shall also prepare a preliminary report, and notify the owner and sponsor of a hearing by the Board of Supervisors to confirm such

report at least ten days before the date of the hearing. The report shall contain the owner and project sponsor's names, a description of the development project, a description of the parcels of real property to be encumbered as set forth in the Assessor's Map Books for the current year, a description of the alleged violation of this Section, and shall fix a time, date, and place for hearing. MTA shall transmit this report to the sponsor and each owner of record of the parcels of real property subject to the lien.

(3) Any notice required to be given to an owner or project sponsor shall be deemed sufficiently served for all purposes in this Section if (a) personally served upon the owner or project sponsor, or (b) if deposited, postage prepaid, in the U.S. Mail addressed to the owner or project sponsor at the official address of the owner or project sponsor maintained by the Tax Collector for the mailing of tax bills or, if no such address is available, to the sponsor at the address of the development project and to the applicant for the site or building permit at the address on the permit application.

(4) Except for the release of the lien recording fee authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector under this Section shall be held in trust by the Treasurer and distributed as provided in Section 411.6 of this Code.

Section 5. The San Francisco Planning Code is hereby amended by amending Sections 411, 411.1, 411.2, 411.3, 411.4, 411.5, 411.7 and 411.8, and adding Section 411.9, to read as follows:

SEC. 411. TRANSIT IMPACT DEVELOPMENT FEE.

Sections 411.1 through ~~*411.8*~~*411.9*, hereafter referred to as Section 411.1 et seq., set forth the requirements and procedures for the TIDF. The effective date of these requirements shall be the date the requirements were originally effective or were subsequently modified, whichever applies.

SEC. 411.1. FINDINGS.

A. In 1981, the City enacted an ordinance imposing a Transit Impact

Development Fee on new office development in the Downtown area of San Francisco. The TIDF was based on studies showing that the development of new office uses places a burden on the Municipal Railway, especially in the downtown area of San Francisco during commute hours, known as "peak periods." The TIDF was based on two cost analyses: one by the Finance Bureau of the City's former Public Utilities Commission, performed in 1981, and one by the accounting firm of Touche-Ross, performed in March 1983 to defend a legal challenge to the TIDF.

B. In 2000, the Planning Department, with assistance from the Municipal Transportation Agency, commissioned a study of the TIDF. In 2001, the Department selected Nelson/Nygaard Associates, a nationally recognized transportation consulting firm, to perform the study. Later in 2001, Nelson/Nygaard issued its final report ("TIDF Study"). Before issuing the TIDF Study, Nelson/Nygaard prepared several Technical Memoranda, which provided detailed analyses of the methodology and assumptions used in the TIDF Study.

C. The TIDF Study concluded that new non-residential uses in San Francisco will generate demand for a substantial number of auto and transit trips by the year 2020. The TIDF Study confirmed that while new office construction will have a substantial impact on MUNI services, new development in a number of other land uses will also require MUNI to increase the number of revenue service hours. The TIDF Study recommended that the TIDF be extended to apply to most non-residential land uses. The TIDF Study found that certain types of new development generate very few daily trips and therefore may not appropriately be charged a new TIDF.

D. The TIDF Study further recommended that the City enact an ordinance to impose transit impact fees that would allow MUNI to maintain its base service standard as new development occurs throughout the City. The proposed ordinance would require sponsors of new development in the City to pay a fee that is reasonably related to the

financial burden imposed on MUNI by the new development. This financial burden is measured by the cost that will be incurred by MUNI to provide increased service to maintain the applicable base service standard over the life of such new development.

E. *Subsequently, the City selected Cambridge Systematics, Inc. to prepare a TIDF Update Report, including an updated nexus study for the TIDF. This Report was completed in 2011, and in accordance with the applicable provisions of this Code, used updated data to calculate base service standard fee rates for the Economic Activity Categories subject to the TIDF. The Report also analyzed trip generation rates for these Economic Activity Categories using updated data, and divided the Retail/Entertainment and Cultural/Institution/Education categories into subcategories in order to reflect the comparative diversity of trip generation rates among these land uses.*

F. Based on projected new development over the next 20 years, the TIDF will provide revenue to MUNI that is significantly below the costs that MUNI will incur to mitigate the transit impacts resulting from the new development.

~~F~~*G*. The TIDF is the most practical and equitable method of meeting a portion of the demand for additional Municipal Railway service and capital improvements for the City caused by new non-residential development.

~~G~~*H*. Based on the above findings and the nexus ~~*study*~~ *studies* performed, the City determines that the TIDF satisfies the requirements of the Mitigation Fee Act, California Government Code Section 66001, as follows:

(1) The purpose of the fee is to meet a portion of the demand for additional Municipal Railway service and capital improvements for the City caused by new nonresidential development.

(2) Funds from collection of the TIDF will be used to increase revenue service hours reasonably necessary to mitigate the impacts of new non-residential development on public transit and maintain the applicable base service standard.

(3) There is a reasonable relationship between the proposed uses of the TIDF and the impact on transit of the new developments on which the TIDF will be imposed.

(4) There is a reasonable relationship between the types of new development on which the TIDF will be imposed and the need to fund public transit for the uses specified in Section ~~38.8~~*411.6* of this ~~ordinance~~*Code*.

(5) There is a reasonable relationship between the amount of the TIDF to be imposed on new developments and the impact on public transit from the new developments.

SEC. 411.2. DEFINITIONS

(a) "Final TIDF Determination." The written notice sent by the MTA to a project sponsor in cases where the MTA is responsible for calculation of the TIDF under Section 411.9 of this Article informing the project sponsor of MTA's final calculation of the TIDF.

(b) "New development." Any new construction, or addition to or conversion of an existing structure under one or more building or site permits (1) issued on or after September 4, 2004 but before December 1, 2012 that cumulatively results in 3,000 gross square feet or more of a use covered by the TIDF or (2) issued on or after December 1, 2012 that cumulatively result in 800 gross square feet or more of a use covered by the TIDF. In the case of mixed use development that includes residential development, the term "new development" shall refer to only the non-residential portion of such development. For purposes of this definition, "existing structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.

(c) "Preliminary TIDF Notice." The written notice sent by the MTA to a project sponsor in cases where the MTA is responsible for imposition and collection of the TIDF under Section 411.9 of this Article informing the project sponsor of MTA's initial calculation of the TIDF due and requesting that the project sponsor provide MTA with information about the new development, including but not limited to, the gross square feet of use of the new development.

(d) For additional definitions, ~~See~~see Section 401 of this Article.

SEC. 411.3. APPLICATION OF TIDF.

(a) Application. Except as provided in Subsections (1) and (2) below, the TIDF shall be payable with respect to any new development in the City for which a building or site permit is issued on or after September 4, 2004. In reviewing whether a development project is subject to the TIDF, the project shall be considered in its entirety. A sponsor shall not seek multiple applications for building permits to evade paying the TIDF for a single development project.

(1) The TIDF shall not be payable on new development, or any portion thereof, for which a TIDF has been paid, in full or in part, under the prior TIDF Ordinance ~~*adopted in 1981* (*Ordinance No. 224-81;*~~ former Chapter 38 of the Administrative Code *as amended through June 30, 2010*), except where (A) gross square feet of use is being added to the building; or (B) the TIDF rate for the new development is in an economic activity category with a higher fee rate than the *current rate for the economic activity category under which the TIDF was originally paid*~~*rate set for MIPS*~~, as set forth in Section 411.3(e).

(2) No TIDF shall be payable on the following types of new development.

(A) New development on property owned (including beneficially owned) by the City, except for that portion of the new development that may be developed by a private sponsor and not intended to be occupied by the City or other agency or entity exempted under Section 411.1 et seq., in which case the TIDF shall apply only to such non-exempted portion. New development on property owned by a private person or entity and leased to the City shall be subject to the fee, unless the City is the beneficial owner of such new development or unless such new development is otherwise exempted under this Section. *The exception established under subsection 411.3(a)(2)(A) for new development on property beneficially owned by the*

City shall only be applicable where a project sponsor for a new development has filed an application for environmental evaluation, a categorical exemption or a preliminary project assessment on or before December 31, 2013, or, for new development within the Mission Bay North Project Area, the Mission Bay South Project Area, the Hunters Point Shipyard Project Area, the Bayview Hunters Point Redevelopment Area, or the Transbay Redevelopment Project Area, the project sponsor submits proof that the sponsor has submitted to the successor agency to the former Redevelopment Agency of the City and County of San Francisco documentation comparable to that required for an application for environmental evaluation, a categorical exemption or a preliminary project assessment for the project on or before December 31, 2013.

(B) Any new development in Mission Bay North or South to the extent application of this Chapter would be inconsistent with the Mission Bay North Redevelopment Plan and Interagency Cooperation Agreement or the Mission Bay South Redevelopment Plan and Interagency Cooperation Agreement, as applicable.

(C) New development located on property owned by the United States or any of its agencies to be used exclusively for governmental purposes.

(D) New development located on property owned by the State of California or any of its agencies to be used exclusively for governmental purposes.

(E) New development for which a project sponsor filed an application for environmental evaluation or a categorical exemption prior to April 1, 2004, and for which the City issued a building or site permit on or before September 4, 2008; provided however, that such new development may be subject to the TIDF imposed by Ordinance No. 224-81, as amended through June 30, 2004, except that the ~~*Department and the Development Fee Collection Unit at DBI shall be responsible for the*~~ administration, imposition, review and collection of any such fee ~~*consistent*~~ *shall be conducted in accordance* with the administrative procedures set forth in Section 411.~~*1*~~*9* ~~*et seq*~~. ~~*The Department*~~ *DBI and MTA* shall make the text of Ordinance No.

224-81, as amended through June 30, 2004, available on ~~the Department's~~ *their* website*s* and shall provide copies of that ordinance upon request.

(F) The following types of new developments*, except to the extent that any such new development is also captured under a more specific use under this Code that is not otherwise exempt*:

(i) Public facilities/utilities, as defined in Section 209.6 of this Code*, except that this exclusion shall not apply to new development on property owned by a private person or entity and leased to the City*;

(ii) Open recreation/horticulture, as defined in Section 209.5 of this Code, including private noncommercial recreation open use, as referred to in Section 221(g) of this Code;

(iii) Vehicle storage and access, as defined in Section 209.7 of this Code;

(iv) Automotive services, as defined in Section 223(l)-(v) of this Code, that are in a new development*, where the project sponsor has met the deadline established in subsection 411.3(a)(3)*;

(v) Wholesale storage of materials and equipment, as defined in Section 225 of this Code*, where the project sponsor has met the deadline established in Section 411.3(a)(3)*;

(vi) Other Uses, as defined in Section 227(~~a~~*c*)-(~~o~~*l*)*, (n)-(o)*, and (q)-(r) of this Code;

(3) The exclusions from TIDF set forth in Section 411.3(a)(2)(F)(iv) and (v) (automotive services and wholesale storage of materials and equipment) shall only apply where a project sponsor for a new development has filed an application for environmental evaluation, a categorical exemption or a preliminary project assessment for the project on or before December 31,

2013, or, for new development within the Mission Bay North Project Area, the Mission Bay South Project Area, the Hunters Point Shipyard Project Area, the Bayview Hunters Point Redevelopment Area, or the Transbay Redevelopment Project Area, the project sponsor submits proof that the sponsor has submitted to the successor agency to the former Redevelopment Agency of the City and County of San Francisco documentation comparable to that required for an application for environmental evaluation, a categorical exemption or a preliminary project assessment for the project, on or before December 31, 2013.

(b) Timing of Payment. Except for those Integrated PDR projects subject to Section 328 of this Code, the TIDF shall be paid prior to issuance of the first construction document, with an option for the project sponsor to defer payment until prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with Section 107A.13 of the San Francisco Building Code. Under no circumstances may any City official or agency, including the Port of San Francisco, issue a certificate of final completion and occupancy for any new development subject to the TIDF until the TIDF has been paid;

(c) Calculation of TIDF.

(1) The TIDF shall be calculated on the basis of the number of *gross* square feet of new development, multiplied by the square foot rate in effect at the time of building or site permit issuance for each of the applicable economic activity categories within the new development, as provided in Subsection 411.3(e) below. An accessory use shall be charged at the same rate as the underlying use to which it is accessory*, except that where any underlying use other than Residential is exempt from the TIDF under this Section, the fee shall nonetheless be charged for the accessory use unless such accessory use is otherwise exempt*. Whenever any new development or series of new developments cumulatively creates more than 3,000 gross square feet of covered use within a structure, *in the case of a building or site permit issued on or before November 30, 2012, or more than 800 gross square feet of covered use within a structure, in the*

case of a building or site permit issued on or after December 1, 2012, the TIDF shall be imposed on every square foot of such covered use (including any portion that was part of prior new development below the ~~*3,000*~~ *applicable* square foot threshold).

(2) When calculating the TIDF for a development project in which there is a change of use such that the rate charged for the new economic activity category is higher than the rate charged for the existing economic activity category, the TIDF per square foot rate for the change of use shall be the difference between the rate charged for the new use and the existing use.

(d) Credits. *When* ~~*In*~~ determining the number of gross square feet of use to which the TIDF applies, the Department shall provide *the following credits:*

(1) Prior Use Credits. There shall be a credit for prior uses eliminated on the site. The credit shall be calculated according to the following formula:

(~~*1*~~*A*) There shall be a credit for the number of gross square feet of use being eliminated by the new development, multiplied by an adjustment factor to reflect the difference in the fee rate of the use being added and the use being eliminated. The adjustment factor shall be determined by the Department as follows:

(~~*A*~~*i*) The adjustment factor shall be a fraction, the numerator of which shall be the fee rate which the Department shall determine, in consultation with the MTA, if necessary, applies to the economic activity category in the most recent calculation of the TIDF Schedule approved by the ~~*MTA*~~ Board *of Supervisors* for the prior use being eliminated by the project.

(~~*B*~~*ii*) The denominator of the fraction shall be the fee rate for the use being added, as set forth in the most recent calculation of the TIDF Schedule approved by the ~~*MTA*~~ Board *of Supervisors*.

(~~*2*~~*B*) A credit for a prior use may be given only if the prior use was active on the site within five years before the date of the application for a building or site permit for the

proposed use.

(~~3~~*C*) As of September 4, 2004, no sponsor shall be entitled to a refund of the TIDF on a building for which the fee was paid under the former Chapter 38 of the San Francisco Administrative Code.

(~~4~~*D*) Notwithstanding the foregoing, the adjustment factor shall not exceed one.

(2) Policy Credits. Development projects that meet the criteria outlined in Subsection 411.3(d)(2)(B) may receive Policy Credits, subject to the following limitations:

(A) Limit on Available Policy Credits. When making a determination under this Article for the amount of TIDF owed, the Department shall allocate available Policy Credits, described in Section 411.3(d)(2)(B), as follows:

(i) No development project shall receive a Policy Credit under Section 411.3(d)(2)(B) if the total amount of credits received by development projects under that section would exceed 3% of the total anticipated TIDF revenue for the current Fiscal Year. To the extent Policy Credits allowed in any Fiscal Year are not allocated, the unallocated amount shall be carried over to the next Fiscal Year. The amount to be carried over to the next Fiscal Year shall be calculated based upon 3% of the sum of the actual TIDF revenues collected during the current Fiscal Year and the total amount of policy credits granted during the current Fiscal Year.

(ii) In no event shall the Policy Credits for a single development exceed 100% of the total TIDF that would otherwise be due.

(B) The Planning Department shall maintain and shall make available on the Planning Department's website, a list showing:

(i) All development projects receiving Policy Credits under Section 411.3(d)(2)(C) of this Article, and, if applicable, the date(s) of approval and the issuance of any building or site permit;

(ii) The total amount of Policy Credits received with respect to each listed development project;

(iii) Any Policy Credits allocated to a development project the site permit for which is modified, cancelled, revoked, or has expired;

(iv) Such other information as the Department may determine is appropriate.

(C) Available Policy Credits: The following development projects may receive Policy Credits, subject to the limitations set forth in Section 411.3(d)(2)(A):

(i) Small Businesses. Businesses that either occupy or expand any pre-existing commercial space, provided that: (a) the gross square footage of such commercial space is not greater than 5,000 square feet, and (b) the business is not formula retail, as defined in Sections 703.3 and 806.3 of this Code.

(ii) Reduced Parking Developments. In zoning districts that set a parking maximum, development projects that provide a lower number, or ratio, of off-street parking than permitted in Table 151.1 of this Code. The credit shall be determined by the Department as follows:

Max. Allowed in Planning Code Table 151.1	*50% of Max. or Less*	*60% of Max.*	*75% of Max.*	*90% of Max.*	*100% of Max. or more*
TIDF Credit	*90%*	*80%*	*50%*	*20%*	*0%*

(D) Process for Allocation of Policy Credits: The Policy Credits described in this Section shall be allocated to qualifying development projects by the Zoning Administrator at the moment their first entitlement is approved by the Planning Commission or the Planning Department. In addition, the following considerations shall apply:

(i) If a development project is modified for any reason after it is first approved, and such modification would result in a potential increase in the amount of Policy Credits allocated to it, the

development project shall maintain the credits allocated on the list described in Section 411.3(d)(2)(A)(v). Any additional credit may only be allocated at the time such modification is approved, subject to the limits of Section 411.3(d)(2)(A)(i)).

(ii) If a development project is modified for any reason after it is first approved, and such modification would result in a potential decrease in the amount of Policy Credits allocated to it, the remainder Policy Credits shall become available for other qualifying development projects during the approval period on account of such a modification.

(iii) The maximum amount of Policy Credits available for the approval period shall be increased by the amount of Policy Credits allocated to a development project for which an issued site or building permit has been finally cancelled or revoked, or has expired, with the irrevocable effect of preventing construction of the development.

(3) Limitation. In no event shall the combined Policy Credits and Prior Use Credits for a single development exceed 100% of the total TIDF that would otherwise be due.

(e) TIDF Schedule. The TIDF Schedule shall be as follows:

Economic Activity Category ***or Subcategory***	**TIDF Per Gross Square Foot of Development**
Cultural/Institution/Education	~~*$10.00*~~
Day Care/Community Center	*$13.30*
Post-Secondary School	*$13.30*
Museum	*$11.05*
Other Institutional	*$13.30*
Management, Information and Professional Services	$~~*10.00*~~*12.64*
Medical and Health Services	$~~*10.00*~~*13.30*
Production/Distribution/Repair	$~~*8.00*~~*6.80*
Retail/Entertainment	$~~*10.00*~~*13.30*
Visitor Services	$~~*8.00*~~*12.64*

SEC. 411.4. IMPOSITION OF TIDF.

(a) Determination of Requirements.

(1) Except for projects where the building or site permit was issued prior to July 1, 2010, *t*~~T~~he Department shall determine the applicability of Section 411.1 et seq. to any development project requiring a first construction document and, if Section 411.1 is applicable, shall impose any TIDF owed as a condition of approval for issuance of the first construction document for the development project. The project sponsor shall supply any information necessary to assist the Department in this determination. The Zoning Administrator may seek the advice and consent of the MTA regarding any interpretations that may affect implementation of this section.

(2) For projects where the building or site permit was issued prior to July 1, 2010, the applicability of Section 411.1 et seq. shall be determined by MTA in accordance with Section 411.9.

(b) Department Notice to Development Fee Collection Unit at DBI ~~*and MTA*~~ of Requirements. After the Department has made its final determination regarding the application of the TIDF to a development project under Section 411.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI~~*and the Director of MTA*~~ of any TIDF owed in addition to the other information required by Section 402(b) of this Article. ~~*If the MTA Director disputes the Department's calculation, he or she shall promptly inform the Development Fee Collection Unit and the MTA Director's determination shall prevail.*~~

(c) Process for Revisions of Determination of Requirements. In the event that the Department or the Commission takes action affecting any development project subject to Section 411.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 411.5. ~~*REVIEW OF TIDF SCHEDULE*~~***PRINCIPLES IN CALCULATING FEE.***

~~*(a) Five-Year Review.*~~

~~*(1) Every five years, or more often as the MTA Board may deem necessary, the Director of MTA shall prepare a report for the MTA Board and the Board of Supervisors with recommendations regarding whether the TIDF for each economic activity category should be increased, decreased, or remain the same. The Director of MTA shall coordinate this report with the five-year evaluation by the Director of Planning required by Section 410 of this Article.*~~

~~*(2) In making such recommendations, and to the extent that new information is available, the Director of MTA shall update the following information and estimates that were used in the TIDF Study to calculate the base service standard fee rates, and any other information that the*~~

~~*Director deems appropriate.*~~

~~*(A) The base service standard;*~~

~~*(B) Capital and operating costs;*~~

~~*(C) Federal and state grant funds received by MUNI;*~~

~~*(D) Passenger fare revenue;*~~

~~*(E) Daily revenue service hours;*~~

~~*(F) Cost per revenue service hour;*~~

~~*(G) Trip generation rates by economic activity category;*~~

~~*(H) Cost per trip;*~~

~~*(I) Cost per gross square foot of development by economic activity category;*~~

~~*(J) Net present value factor;*~~

~~*(K) Useful life period(s) for new development by economic activity category;*~~

~~*(L) Estimated annual rate of return on the proceeds of the fee;*~~

~~*(M) The placement of particular land uses in economic activity categories.*~~

~~*Where applicable, the Director of MTA shall use the most recent MUNI information as submitted to the National Transit Database. The denominator of the revised base service standard shall be calculated using the most recent estimates of daily automobile and transit trips developed by the Planning Department or other City or State agency.*~~

~~*(3) In the report, the Director of MTA shall (A) identify the base service standard fee rates per gross square foot in each economic activity category; and (2) propose a fee for each economic activity category.*~~

~~*(4) After receiving this report and making it available for public distribution, the Board of Supervisors shall conduct a public hearing in which it shall consider the MTA Director's report, hear testimony from any interested members of the public, and receive such other evidence as it may deem necessary. At the conclusion of that hearing, the Board shall make findings regarding whether the*~~

~~*revenues projected to be recovered under the proposed Fee Schedule would be reasonably related to and would not exceed the costs incurred by MUNI to maintain the applicable base service standard, in light of demands caused by new development. The Board shall then make any necessary or appropriate revisions to the TIDF Schedule.*~~

~~*(5) The Board shall consider the MTA Director's report in light of the most recent five-year review of development fees under Section 410 of this Article). MUNI and the Planning Department shall make every effort to coordinate application of the TIDF with the City's other development fees to avoid unnecessarily encumbering sponsors of new development.*~~

~~*(b) Principles in Calculating Fee.*~~ The following principles have been and shall in the future be observed in calculating the TIDF:

(~~*1*~~*a*) Actual cost information provided to the National Transit Database shall be used in calculating the fee rates. Where estimates must be made, those estimates ~~*should*~~ *shall* be based on such information as the Director of ~~*MTA*~~ *Transportation* or his or her delegate considers reasonable for the purpose.

(~~*2*~~*b*) The rates shall be set at an actuarially sound level to ensure that the proceeds, including such earnings as may be derived from investment of the proceeds and amortization thereof, do not exceed the capital and operating costs incurred ~~*in order*~~ to maintain the applicable base service standard in light of the demands created by new development subject to the fee over the estimated useful life of such new development. For purposes of ~~*this*~~ Section 411.1 et seq. *of this Code*, *and any Comprehensive Five Year Evaluation of the TIDF under Section 410*, the estimated useful life of a new development is 45 years.

SEC. 411.7. RULES AND REGULATIONS.

The MTA is empowered to adopt such rules, regulations, and administrative procedures as it deems necessary to implement ~~*this*~~ Section 411.~~*1*~~*9* ~~*et seq.*~~. In the event of a

conflict between any MTA rule, regulation or procedure and ~~*this*~~ Section*s* 411.1 *through 411.9*~~*et seq.*~~ *of this Code*, *the code section in conflict*~~*this Section*~~ shall prevail.

SEC. 411.8. CHARITABLE EXEMPTIONS

(a) The exemptions established by this Section shall be applicable only where a project sponsor for a new development has filed an application for environmental evaluation, a categorical exemption or a preliminary project assessment for the project on or before December 31, 2013, or, for new development within the Mission Bay North Project Area, the Mission Bay South Project Area, the Hunters Point Shipyard Project Area, the Bayview Hunters Point Redevelopment Area, or the Transbay Redevelopment Project Area, the project sponsor submits proof that the sponsor has submitted to the successor agency to the former Redevelopment Agency of the City and County of San Francisco documentation comparable to that required for an application for environmental evaluation, a categorical exemption or a preliminary project assessment for the project, on or before December 31, 2013.

(~~*a*~~*b*) When the property or a portion thereof will be exempt from real property taxation or possessory interest taxation under California Constitution, Article XIII, Section 4, as implemented by California Revenue and Taxation Code Section 214, then the sponsor shall not be required to pay the TIDF attributed to the new development in the exempt property or portion thereof, so long as the property or portion thereof continues to enjoy the aforementioned exemption from real property taxation. This exemption from the TIDF shall not apply to the extent that the non-profit organization is engaging in activities falling under the Retail/Entertainment or Visitor Services economic activity categories in the new development that would otherwise be subject to the TIDF.

(~~*b*~~*c*) The TIDF shall be calculated for exempt structures in the same manner and at the same time as for all other structures. Prior to issuance of a building or site permit for the

development project, *t*he sponsor may apply to the ~~*MTA*~~*Department* for an exemption under the standards set forth in subsection (a) above. ~~*In the event*~~ *If* the ~~*Agency*~~*Department* determines that the sponsor is entitled to an exemption under this Section, it shall cause to be recorded a notice advising that the TIDF has been calculated and imposed upon the structure and that the structure or a portion thereof has been exempted from payment of the fee but that if the property or portion thereof loses its exempt status during the 10-year period commencing with the date of the imposition of the TIDF, then the building owner shall be subject to the requirement to pay the fee.

(~~*c*~~*d*) If within 10 years from the date of the issuance of the Certificate of Final Completion and Occupancy, the exempt property or portion thereof loses its exempt status, then the sponsor shall, within 90 days thereafter, be obligated to pay the TIDF, reduced by an amount reflecting the duration of the charitable exempt status in relation to the useful life estimate used in determining the TIDF for that structure. The amount remaining to be paid shall be determined by recalculating the fee using a useful life equal to the useful life used in the initial calculation minus the number of years during which the exempt status has been in effect. After the TIDF has been paid, the ~~*Agency*~~*Department* shall record a release of the notice recorded under subsection (b) above.

(~~*d*~~*e*) ~~*In the event*~~ *If* a property owner fails to pay a fee within the 90-day period, a notice for request of payment shall be served by the Development Fee Collection Unit at DBI under Section 107A.13 of the San Francisco Building Code. Thereafter, upon nonpayment, a lien proceeding shall be instituted under Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code.

SEC. 411.9. IMPOSITION AND COLLECTION OF TIDF DUE UNDER FORMER LAW.

(a) Ordinance No. 224-81 originally enacted the TIDF in 1981, codified in Chapter 38 of the Administrative Code. Chapter 38 was amended several times between 1981 and 2004. In 2004,

Ordinance No. 199-04 repealed and replaced the existing Chapter 38, which was subsequently amended, and then repealed in 2010 by Ordinance 108-10, which relocated the TIDF from the Administrative Code to this Code. In determining the applicable TIDF due for a project under this Section 411.9, MTA shall calculate the TIDF based upon the law in effect on the date of issuance of the first building or site permit for the project. Subsequent references to "former Administrative Code Chapter 38" in this section 411.9 shall be intended to refer to that Chapter as it read on the date of issuance of the first building or site permit for the project in question.

(b) MTA shall be responsible for determining the TIDF to the City for new development for which the City issued a building or site permit prior to July 1, 2010. In such cases, MTA shall determine the TIDF as follows:

(1) Where MTA has determined that such new development may be subject to the TIDF, MTA may cause the County Recorder to record a notice that the new development is potentially subject to the TIDF under this Article. Such notice shall identify the development project and state that MTA is evaluating whether the project is subject to the TIDF as well as the amount of any potential liability. The notice shall also state that if MTA subsequently determines that a TIDF is due on the project and the amount due is not paid, MTA may impose a lien on the property in accordance with this Article. Where MTA has caused this notice to be recorded and subsequently concludes that the project is not subject to the TIDF, MTA shall promptly record a notice identifying the project and stating that the agency has determined that the project is not subject to the TIDF.

(2) MTA shall send a Preliminary TIDF Notice to the project sponsor informing the project sponsor of MTA's proposed determination that TIDF is due for the project and requesting that the sponsor file with MTA, on such form as MTA may develop, a report indicating the number of gross square feet of use of the new development and any other information that MTA may require to determine the project sponsor's obligation to pay the TIDF.

(3) The Preliminary TIDF Notice shall

(A) identify the development project;

(B) state the legal authority for imposing the TIDF;

(C) specify the preliminary amount of the fee that MTA calculates the sponsor owes based on the information available to the agency, which amount MTA shall calculate on the basis of the number of gross square feet of new development, multiplied by the square foot rate in effect at the time of building or site permit issuance for each of the applicable economic categories within the new development under former Administrative Code Chapter 38, and taking into account any exceptions or credits provided therein; and

(D) list the name and contact information for the staff person at MTA responsible for calculating the TIDF.

(4) When calculating the TIDF for a development project in which there is a change of use such that the rate charged for the new economic activity category is higher than the rate charged for the existing economic activity category, the TIDF per square foot rate for the change of use shall be the difference between the rate charged for the new use and the existing use.

(5) The project sponsor shall submit the report of gross square feet of use to MTA not later than 15 calendar days from the date of mailing of the Preliminary TIDF Notice.

(6) After receiving the report of gross square feet of use, or if no response is received from the project sponsor within 15 calendar days from the date of mailing of the Preliminary TIDF Notice, MTA shall prepare a Final TIDF Determination for the project by determining the fee under Subsection 411.9(b)(3)(C), taking into account any additional information received from the project sponsor since the Preliminary TIDF Notice. The Final TIDF Determination shall also contain the information required by Subsection 411.9(b)(3)(A), (B) and (D) and inform the project sponsor of the sponsor's right to seek review of the determination in accordance with either Section 411.9(c) or (d).

(7) MTA shall cause the Final TIDF Determination to be addressed to the project sponsor and deposited in the U.S. Mail on the date of issuance of that Report. In addition, MTA shall transmit

the Final TIDF Determination to DBI in the case of projects subject to Section 411.9(c).

(c) Where the City issued a building or site permit prior to July 1, 2010 and the City has not issued the First Certificate of Occupancy for that development, DBI shall be responsible for collection of the fee due consistent with the otherwise applicable requirements set forth in this Article and the San Francisco Building Code. For purposes of this paragraph, the Final TIDF Determination shall be treated as a Project Development Fee Report.

(d) Notwithstanding any provisions to the contrary in the San Francisco Building Code, where the TIDF may be owed to the City for new development for which the City issued a building or site permit prior to July 1, 2010, and the City issued the First Certificate of Occupancy for the new development on or before the effective date of this Section 411.9, MTA shall be responsible for the collection of the fee due in accordance with the procedures set forth in this Subsection 411.9(d).

(1) Recording of Fee. Once it has prepared the Final TIDF Determination, MTA may cause the County Recorder to record a notice that the development is subject to the TIDF. The County Recorder shall serve or mail a copy of such notice to the project sponsor and the owners of the real property described in the notice. The notice shall include (i) a description of the real property subject to the fee; (ii) a statement that the development is subject to the fee; and (iii) a statement that the MTA has determined the amount of the fee to which the project is subject under this Section and related provisions of this Article.

(2) Dispute Resolution. If the project sponsor disputes the accuracy of the Final TIDF Determination, including the mathematical calculation of the number of gross square feet subject to the fee, the project sponsor may request a review of the Final TIDF Determination by the Director of Transportation. The project sponsor shall submit any request for review not later than 15 calendar days after the date of issuance of the Final TIDF Determination. The Director of Transportation shall attempt to resolve the dispute in consultation with the project sponsor, and may request additional information from either MTA staff or the project sponsor. The Director of Transportation shall issue

his or her decision in writing to the project sponsor not later than 30 calendar days from receipt of the review request, unless the project sponsor and the Director of Transportation mutually agree to extend this period. The Director of Transportation shall cause the decision to be placed in the U.S. Mail on the date of issuance.

(3) Appeal to MTA Board of Directors.

(A) The project sponsor may appeal the decision of the Director of Transportation on the Final TIDF Determination to the MTA Board of Directors by submitting a written notice of appeal, accompanied by payment of the full amount of the contested fee, to the Secretary of the MTA Board not later than 15 calendar days after the date of issuance of the Director of Transportation's decision. Any portion of the fee that is not upheld upon appeal to the MTA Board of Directors shall be refunded as set forth in subparagraph (D) below.

(B) In order to appeal to the MTA Board of Directors under this Section, a project sponsor appellant must first have attempted to resolve the dispute or question by following the procedure in Section 411.9(d)(2). The MTA Board Secretary may not accept an appeal for filing under this subsection unless the appellant submits written evidence of this prior attempt.

(C) In hearing any appeal of the Final TIDF Determination, the MTA Board's jurisdiction is strictly limited to determining whether the mathematical calculation of the TIDF is accurate and resolving any technical disputes over the use, occupancy, floor area, unit count and mix, or other objective criteria upon which the applicable provisions of law dictated the calculation.

(D) The MTA Board shall schedule the appeal for hearing within 90 calendar days of the date of submission of the appeal, and shall issue a decision within 60 days of hearing the appeal. Within five business days of the MTA Board's decision, the MTA Board Secretary shall cause the decision of the MTA Board to be placed in the U.S. Mail addressed to the appellant. The decision shall be accompanied by any refund of the TIDF paid due to appellant following the MTA Board's decision. Any amount refunded shall bear interest at the rate of 2/3 of 1 percent per month or fraction thereof, or

the average rate of interest computed over the preceding 6-month period obtained by the San Francisco Treasurer on deposits of public funds at the time the refund is made, whichever rate is lower, and shall be computed from the date of payment of the fee to the date of refund plus interest.

(4) Payment and Collection.

(A) Payment of TIDF. The TIDF shall be due and payable to the MTA not later than 30 days after the date of mailing of the Final TIDF Determination unless the project sponsor has timely requested review by the Director of Transportation under Section 411.9(d)(2) or initiated an appeal to the MTA Board of Directors under Section 411.9(d)(3), in which case any TIDF shall be due and payable to MTA on the earlier of 30 days after the date of the Director of Transportation's decision under Section 411.9(d)(2) or at the time of submission of the written notice of appeal to the MTA Board of Directors under Section 411.9(d)(3)(A) above.

(B) Payment of the TIDF imposed under this section is delinquent if (i) in the case of a fee not payable in installments, the fee is not paid by the dates set forth in the preceding paragraph; or (ii) in the case of a fee for Integrated PDR subject to Section 428A of this Code, any installment of the fee is not paid within 30 days of the date fixed for payment. In such case, MTA shall mail an additional request for payment to the project sponsor stating that:

(i) If the amount due is not paid within 30 days of the date of mailing of the additional request and notice, interest at the rate of one and one-half percent per month or portion thereof shall be assessed upon the fee due and shall be computed from the date of delinquency until the date of payment; and

(ii) If the account is not current within 60 days of the date of mailing of the additional request and notice, MTA shall institute lien proceedings in accordance with Section 408(b).

Section 6. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 7. Scope of Amendment. In enacting this Ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
DAVID A. GREENBURG
Deputy City Attorney