

Amendment of the Whole
June 4, 2007.

FILE NO. 070133

ORDINANCE NO.

1 [Limiting exemptions from, and clarifying the scope and collection of, the Transit Impact
2 Development Fee.]

3 **Ordinance (1) amending Chapter 38 of the Administrative Code by (a) amending**
4 **Sections 38.1 and 38.3, and adding a new Section 38.3-1 to limit the exemption from the**
5 **current Transit Impact Development Fee (TIDF) for projects for which an application for**
6 **environmental review or a categorical exemption was submitted on or before April 1,**
7 **2004, to instances in which a building or site permit is issued on or before September**
8 **14, 20072008, and requiring that such exempt projects that would otherwise have been**
9 **subject to the former TIDF pay a fee on new office space only equivalent to the amount**
10 **that would have been due under the former TIDF ordinance; (b) amending Section 38.1**
11 **to clarify the definitions of "Gross Floor Area" and "Retail/Entertainment;" (c)**
12 **amending Section 38.3 to correct an unintended exclusion for art spaces; (d) amending**
13 **Section 38.5 to specify that the TIDF due for a project is based on the fee in effect on**
14 **the date of payment; and (e) amending Section 38.6 to clarify the circumstances in**
15 **which a credit for prior eliminated uses is available and make clear that any credit**
16 **against the amount of the TIDF based on prior use cannot exceed the amount of the**
17 **TIDF due; and (2) making environmental findings.**

18 Note: Additions are *single-underline italics Times New Roman*;
19 deletions are *~~strikethrough italics Times New Roman~~*.
20 Board amendment additions are double underlined.
21 Board amendment deletions are ~~strikethrough normal~~.

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

23 Section 1. The Planning Department has determined that the actions contemplated in
24 this Ordinance are in compliance with the California Environmental Quality Act (California
25 Public Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of
the Board of Supervisors in File No. 070133 and is incorporated herein by reference.

1 Section 2. The San Francisco Administrative Code is hereby amended by amending
2 Section 38.1 to read as follows:

3 SEC. 38.1. DEFINITIONS.

4 For the purposes of this Chapter, the following definitions shall apply:

5 A. Accessory Use. A related minor use which is either necessary to the
6 operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental
7 and subordinate to any such use and is located on the same lot as the principal or conditional
8 use.

9 B. Base Service Standard. The relationship between revenue service hours
10 offered by the Municipal Railway and the number of automobile and transit trips estimated to
11 be generated by certain non-residential uses, expressed as a ratio where the numerator
12 equals the average daily revenue service hours offered by MUNI, and the denominator equals
13 the daily automobile and transit trips generated by non-residential land uses as estimated by
14 the TIDF Study or updated under Section 38.7 of this ~~ordinance~~Chapter.

15 C. Base Service Standard Fee Rate. The transit impact development fee
16 that would allow the City to recover the estimated costs incurred by the Municipal Railway to
17 meet the demand for public transit resulting from new development in the economic activity
18 categories for which the fee is charged, after deducting government grants, fare revenue, and
19 costs for non-vehicle maintenance and general administration.

20 D. Board. The Board of Supervisors of the City and County of San
21 Francisco.

22 E. Certificate of Final Completion and Occupancy. A certificate of final
23 completion and occupancy issued by any authorized entity or official of the City, including the
24 Director of the Department of Building Inspection, under the Building Code.

25 F. City. The City and County of San Francisco.

1 G. Covered Use. Any use subject to the TIDF.

2 H. Cultural/Institution/Education (CIE). An economic activity category that
3 includes, but is not limited to, schools, as defined in subsections (g), (h), and (i) of Section
4 209.3 of the Planning Code and subsections (f)—(i) of Section 217 of the Planning Code; child
5 care facilities, as defined in subsections (e) and (f) of Section 209.3 of the Planning Code and
6 subsection (e) of Section 217 of the Planning Code; museums and zoos; and community
7 facilities, as defined in Section 209.4 of the Planning Code and subsections (a)—(c) of
8 Section 221 of the Planning Code.

9 I Director. The Director of Transportation of the MTA, or his or her
10 designee.

11 J. Economic Activity Category. One of the following six categories of
12 nonresidential uses: Cultural/Institution/Education (CIE), Management, Information and
13 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair
14 (PDR), Retail/Entertainment, and Visitor Services.

15 K. Gross Floor Area. The total area of each floor within the building's
16 exterior walls, as defined in Section 102.9 of the San Francisco Planning Code, except that for
17 purposes of determining the applicability of the TIDF, the exclusion from this definition set forth in
18 Section 102.9(b)(12) of that Code shall not apply.

19 L. Gross Square Feet of Use. The total square feet of gross floor area in a
20 building and/or space within or adjacent to a structure devoted to all covered uses, including
21 any common areas exclusively serving such uses and not serving residential uses. Where a
22 structure contains more than one use, areas common to two or more uses, such as lobbies,
23 stairs, elevators, restrooms, and other ancillary space included in gross floor area that are not
24 exclusively assigned to one use shall be apportioned among the two or more uses in

25

1 accordance with the relative amounts of gross floor area, excluding such space, in the
2 structure or on any floor thereof directly assignable to each use.

3 M. Management, Information and Professional Services (MIPS). An
4 economic activity category that includes, but is not limited to, office use as defined in Section
5 313.1(35) of the Planning Code; medical offices and clinics, as defined in Section 890.114 of
6 the Planning Code; and business services, as defined in Section 890.111 of the Planning
7 Code.

8 N. Medical and Health Services. An economic activity category that
9 includes, but is, not limited to, those non-residential uses defined in Sections 209.3(a) and
10 217(a) of the Planning Code; animal services, as defined in subsections (a) and (b) of Section
11 224 of the Planning Code; and social and charitable services, as defined in subsection (d) of
12 Section 209.3 of the Planning Code and subsection (d) of Section 217 of the Planning Code.

13 O. Municipal Railway; MUNI. The public transit system owned by City and
14 under the jurisdiction of the Municipal Transportation Agency.

15 P. Municipal Transportation Agency; MTA. The agency of City created
16 under Article 8A of the San Francisco Charter.

17 Q. Municipal Transportation Agency Board of Directors; MTA Board. The
18 governing board of the MTA.

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

1 S. Office Space Development Fee; OSDF. A fee imposed under Section 38.3-1 of
2 this Chapter.

3 ST. Planning Code. The Planning Code of the City and County of San
4 Francisco, as it may be amended from time to time.

5 FU. Production/Distribution/Repair (PDR). An economic activity category that
6 includes, but is not limited to, manufacturing and processing, as defined in Section 226 of the
7 Planning Code; those uses listed in Section 222 of the Planning Code; automotive services,
8 as defined in Section 223(a)—(k) of the Planning Code; arts activities and spaces, as defined
9 in Section 102.2 of the Planning Code; and research and development, as defined in Section
10 313.1(42) of the Planning Code.

11 UV. Residential. Any type of use containing dwellings as defined in Section
12 209.1 of the Planning Code or containing group housing as defined in Section 209.2(a)—(c) of
13 the Planning Code.

14 W. Retail/Entertainment. An economic activity category that includes, but is
15 not limited to, retail use, as defined in Section 218 of the Planning Code; entertainment use,
16 as defined in Section 313.1(15) of the Planning Code; massage establishments, as defined in
17 Section 218.1 of the Planning Code; laundering, and cleaning and pressing, as defined in
18 Section 220 of the Planning Code; ~~and wholesale sales, as defined in Section 890.54(b) of the~~
19 ~~Planning Code.~~

20 WX. Revenue Service Hours. The number of hours that the Municipal Railway
21 provides service to the public with its entire fleet of buses, light rail (including streetcars), and
22 cable cars.

23 XY. Sponsor. An applicant seeking approval for construction of new
24 development subject to this Chapter, such applicant's successors and assigns, and/or any
25 person or entity that controls or is under common control with such applicant.

1 ~~YZ~~. TIDF Study. The study commissioned by the San Francisco Planning
2 Department and performed by Nelson/Nygaard Associates entitled “Transit Impact
3 Development Fee Analysis—Final Report,” dated May 2001, including all the Technical
4 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained
5 in Board of Supervisors File No. 040141.

6 ~~ZAA~~. Transit Impact Development Fee; TIDF. The development fee that is the
7 subject of this ~~ordinance~~ Chapter.

8 ~~AABB~~. Treasurer. Treasurer of the City and County of San Francisco.

9 ~~BBCC~~. Trip Generation Rate. The total number of automobile and Municipal
10 Railway trips generated for each 1,000 square feet of development in a particular economic
11 activity category as established in the TIDF Study, or pursuant to the five-year review process
12 established in Section 38.7 of this ~~ordinance~~ Chapter.

13 ~~CCDD~~. Use. The purpose for which land or a structure, or both, are legally
14 designed, constructed, arranged or intended, or for which they are legally occupied or
15 maintained, let or leased.

16 ~~DDEE~~. Visitor Services. An economic activity category that includes, but is not
17 limited to, hotel use, as defined in Section 313.1(18) of the Planning Code; motel use, as
18 defined in subsections (c) and (d) of Section 216 of the Planning Code; and time-share
19 projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

20 Section 3. The San Francisco Administrative Code is hereby amended by amending
21 Section 38.3 to read as follows:

22 SEC. 38.3. IMPOSITION OF TRANSIT IMPACT DEVELOPMENT FEE.

23 A. Subject to the exceptions set forth in subsections D and E below, each
24 sponsor of a new development in the City shall pay to the City and deliver to the Treasurer
25 upon issuance of any temporary certificate of occupancy, and as a condition precedent to

1 issuance for such new development of any certificate of final completion and occupancy,
2 whichever occurs first, a TIDF. The TIDF shall be calculated on the basis of the number of
3 gross square feet of new development, multiplied by the square foot rate ~~then~~ in effect at the
4 time of payment for each of the applicable economic activity categories within the new
5 development, as provided in Section 38.4 of this ~~ordinance~~ Chapter. An accessory use shall be
6 charged at the same rate as the underlying use to which it is accessory. Whenever any new
7 development or series of new developments ~~cumulatively creates results in~~ more than 3,000
8 gross square feet of covered use within a structure, the TIDF shall be imposed on every
9 square foot of such covered use (including any portion that was part of prior new development
10 below the 3,000 square foot threshold).

11 B. No City official or agency, including the Department of Building Inspection
12 (“DBI”) and the Port of San Francisco, may issue a certificate of final completion and
13 occupancy for any new development subject to the TIDF until it has received notification from
14 the Treasurer that the TIDF in accordance with Section 38.4 of this Chapter has been paid.

15 C. Except as provided in Sections 38.3(D) and (E) below, the TIDF shall be
16 payable with respect to any new development in the City for which a building or site permit is
17 issued on or after ~~the effective date of this ordinance~~ September 4, 2004.

18 D. The TIDF shall not be payable on new development, or any portion
19 thereof, for which a transit impact development fee has been paid, in full or in part, under the
20 prior Transit Impact Development Fee Ordinance adopted in 1981 (Ordinance No. 224-81;
21 former Chapter 38 of this Administrative Code), except where (1) gross square feet of use is
22 being added to the building; or (2) the TIDF rate for the new development is in an economic
23 activity category with a higher fee rate than the rate set for MIPS, as set forth in Section 38.4.

24 E. No TIDF shall be payable on the following types of new development.
25

1 (1) New development on property owned (including beneficially owned) by
2 the City, except for that portion of the new development that may be developed by a private
3 sponsor and not intended to be occupied by the City or other agency or entity exempted under
4 this ~~ordinance~~Chapter, in which case the TIDF shall apply only to such non-exempted portion.
5 New development on property owned by a private person or entity and leased to the City shall
6 be subject to the fee, unless the City is the beneficial owner of such new development or
7 unless such new development is otherwise exempted under this Section.

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

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

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

16 (5) New development for which an application for environmental evaluation
17 or an application for a categorical exemption has been filed prior to April 1, 2004, and for which
18 a building permit or site permit is issued prior to on or before September 14, 2007~~2008~~; provided
19 however, that such new development may be subject to the OSDF under Section 38.3-1 of this Chapter.

20 (6) The following types of new developments:

21 (a) Public facilities/utilities, as defined in Section 209.6 of the Planning Code;

22 (b) Open recreation/horticulture, as defined in Section 209.5 of the Planning
23 Code, including private noncommercial recreation open use, as referred to in Section 221(g)
24 of the Planning Code;

1 (c) Vehicle storage and access, as defined in Section 209.7 of the Planning
2 Code;

3 (d) Automotive services, as defined in Section 223(l)—(v) of the Planning
4 Code;

5 (e) Wholesaling, storage, distribution, and open-air handling of materials and
6 equipment, as defined in Section 225 of the Planning Code;

7 (f) Other Uses, as defined in Section 227(a)-(q) and (s)-(t) of the Planning
8 Code;

9 In reviewing whether a development is subject to the fee, the Director shall
10 consider the project in its entirety. A sponsor may not seek multiple building permits to evade
11 paying the TIDF.

12 F. The sponsor shall pay, or cause to be paid, the TIDF to the Treasurer on
13 the earliest of the following dates:

14 (1) The date when 50 percent of the net rentable area of the project has
15 been occupied;

16 (2) The date of issuance of the first temporary permit of occupancy in the
17 new development;

18 G. Upon payment of the fee in full to the Treasurer, and upon request of the
19 sponsor, the Treasurer shall issue a certificate that the fee has been paid. The sponsor shall
20 present such certification to DBI before the issuance of the final certificate of occupancy for
21 the new development. DBI shall provide notice in writing to the Treasurer, the Planning
22 Department, and MUNI at least five business days before issuing the final certificate of
23 occupancy for any new development project. DBI may not issue a final certificate of
24 occupancy for any new development until DBI has received notice from the Treasurer that the
25 TIDF has been paid.

1 Section 4. The San Francisco Administrative Code is hereby amended by adding a
2 new Section 38.3-1 to read as follows:

3 SEC. 38.3-1. IMPOSITION OF OFFICE SPACE DEVELOPMENT FEE.

4 (a) Definitions.

5 For purposes of this Section, the following definitions apply:

6 (1) Downtown Area.. That portion of the City and County bounded by Van Ness Avenue
7 as far north as Broadway, from Van Ness Avenue and Broadway easterly on Broadway to Sansome
8 Street, then northerly on Sansome Street to the Embarcadero; then southeasterly on the Embarcadero
9 to Berry Street; then southwesterly on Berry Street to De Haro Street; then southerly on De Haro Street
10 to Alameda Street; then westerly on Alameda Street to Bryant Street; then northerly on Bryant Street to
11 Thirteenth Street; then westerly on Thirteenth Street to South Van Ness Avenue; then northerly to Van
12 Ness Avenue. The downtown area includes all property which abuts upon any of or is within the area
13 surrounded by the above enumerated boundary streets.

14 (2) Gross Square Foot of Office Use. A square foot of floor space within a structure,
15 whether or not within a room, to be occupied by, or primarily serving, Office Use.

16 (3) Office Use. Any structure or portion thereof intended for occupancy by business
17 entities which will primarily provide clerical, professional or business services of the business entity, or
18 which will primarily provide clerical, professional or business services to other business entities or to
19 the public, at that location.

20 (b) Imposition of Fee.

21 (1) New development in the Downtown Area that contains 3000 or more Gross Square Feet
22 of Office Use for which an application for environmental evaluation or an application for a categorical
23 exemption has been filed prior to April 1, 2004, and for which a building or site permit was issued on
24 or after September 4, 2004, but prior to September 14, 2007~~8~~, shall be subject to an Office Space
25

1 Development Fee in accordance with this Section. The Office Space Development Fee for each Gross
2 Square Foot of Office Use in new development in the Downtown Area shall be \$5 per square foot.

3 (2) Any Office Space Development Fee due under paragraph (b)(1) shall be due and payable in
4 accordance with the procedures set forth in this Chapter governing payment and collection of the
5 TIDF, except that the amount of the fee shall be calculated based upon Gross Square Feet of Office
6 Use, rather than Gross Square Feet of Use.

7 (c) Credits. In determining the number of gross square feet of office use to which the Office
8 Space Development Fee applies, the Director shall provide for the following credits:

9 (1). For prior Office Uses, there shall be credit for the number of gross square feet of
10 Office Use being eliminated as part of the project.

11 (2). For prior uses other than Office Use, there shall be a credit for the number of
12 gross square feet of non-Office Use being eliminated multiplied by an adjustment factor to reflect the
13 difference between office building peak-period Municipal Railway trip generation rates and peak-
14 period Municipal Railway trip generation rates for other uses. The adjustment factor shall be
15 determined by the Director as follows:

16 (A) The adjustment factor shall be a fraction, the numerator of which shall be the
17 peak-period Municipal Railway trip generation rate which the Director shall determine, in consultation
18 with the Department of City Planning applies to the class of prior use being eliminated by the project.

19 (B) The denominator of the fraction shall be the peak-period Municipal Railway trip
20 generation rate for office use used in the most recent calculation of the Transit Impact Development
21 Fee Schedule approved by the Board of Supervisors.

22 (C) Notwithstanding the foregoing, the adjustment factor shall not exceed 1.

23 Section 5. The San Francisco Administrative Code is hereby amended by amending
24 Sections 38.5 and 38.6 to read as follows:

25 SEC. 38.5. SETTING OF TIDF.

1 Before obtaining the first building or site permit for any new development in the City on
2 or after ~~the effective date of this ordinance~~ September 4, 2004, each sponsor shall file with the
3 Director, on such form as the Director may develop, a report indicating the number of gross
4 square feet of use of the new development and any other information the Director may require
5 to determine the sponsor's obligation to pay the TIDF. Each sponsor of a new development
6 who had applied for a building or site permit, but who had not obtained an approval of the
7 building permit or site permit before ~~the effective date of this ordinance~~ September 4, 2004, shall
8 file the same report prior to obtaining a final certificate of occupancy. Except where an
9 exemption otherwise applies under this ~~ordinance~~ Chapter, the Director shall determine the
10 number of gross square feet of use in each applicable economic activity category,
11 disregarding the number of pre-existing gross square feet of use being retained in each such
12 category, apply the fee schedule, and determine the fee, which shall be subject to any
13 adjustments to the TIDF Schedule that occur prior to final payment of any TIDF due. The Director
14 shall mail a copy of his or her written determination to the sponsor. The sponsor may appeal
15 the determination of the number of gross square feet of use subject to the fee, the economic
16 activity category, or the credits described in Section 38.6, to the MTA Board. If the sponsor
17 notifies the Director of its acceptance of the determination, or does not submit an appeal to
18 the MTA Board within 15 days following the date of mailing of notice of the Director's
19 determination, the Director's determination shall be final, and a notice of such determination
20 shall be provided to DBI and the Treasurer. DBI may not issue a site or building permit for any
21 new development until it has received notice from the MTA of the final determination of the
22 amount of the Transit Impact Development Fee to be paid. The MTA shall not change the
23 amount of the TIDF based on changes to the amount of gross square feet of new
24 development during construction of the new development unless the sponsor applies for a
25 new building permit to reflect such changes.

1 SEC. 38.6 CREDITS

2 In determining the number of gross square feet of use to which the TIDF applies, the
3 Director shall provide a credit for prior uses eliminated on the site, ~~provided that a TIDF has not~~
4 ~~been paid for any prior use of the property.~~ The credit shall be calculated according to the
5 following formula:

6 (a) There shall be a credit for the number of gross square feet of use being eliminated
7 by the new development, multiplied by an adjustment factor to reflect the difference in the fee
8 rate of the use being added and the use being eliminated. The adjustment factor shall be
9 determined by the Director as follows:

10 (1) The adjustment factor shall be a fraction, the numerator of which shall be
11 the fee rate which the Director shall determine, in consultation with the
12 Department of City Planning, if necessary, applies to the economic activity
13 category in the most recent calculation of the TIDF Schedule approved by the
14 MTA Board for the prior use being eliminated by the project.

15 (2) The denominator of the fraction shall be the fee rate for the use being
16 added, as set forth in the most recent calculation of the TIDF Schedule
17 approved by the MTA Board.

18 (b) A credit for a prior use may be given only if the prior use was active on the site
19 within five years before the date of the application for a building or site permit for the proposed
20 use.

21 ///

22 (c) As of ~~the effective date of this ordinance~~ September 4, 2004, no sponsor shall be entitled
23 to a refund of the TIDF on a building for which the fee was paid under the former Chapter 38.

24 (d) Notwithstanding the foregoing, the adjustment factor shall not exceed 1.

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

3 By: DAVID A. GREENBURG
4 Deputy City Attorney
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25