

1 [Planning Code - Transit Impact Development Fee Exemptions]

2

3 **Ordinance amending the Planning Code to revise deadlines for certain Transit Impact**  
 4 **Development Fee (TIDF) exemptions; eliminate project-specific references in**  
 5 **exemptions applicable to redevelopment areas, and make such exemptions dependent**  
 6 **on the terms of the controlling development agreement, redevelopment plan,**  
 7 **interagency agreement or other contract entered into by the City; require that the TIDF**  
 8 **be calculated based on the rate in effect and the time of issuance of the first**  
 9 **construction document; and making environmental findings, and findings of**  
 10 **consistency with the General Plan, and the eight priority policies of Planning Code,**  
 11 **Section 101.1.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
 13 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
 14 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
 15 **Board amendment additions** are in double-underlined Arial font.  
 16 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
 17 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
 18 subsections or parts of tables.

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

18 Section 1.

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

23 (b) On \_\_\_\_\_, the Planning Commission, in Resolution No. \_\_\_\_\_, approved  
 24 this legislation, recommended it for adoption by the Board of Supervisors, and adopted  
 25 findings that it will serve the public necessity, convenience and welfare. Pursuant to Planning

1 Code Section 302, the Board adopts these findings as its own. A copy of said Resolution is on  
2 file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated by  
3 reference herein.

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

7

8 Section 2. The Planning Code is hereby amended by revising Section 411.3, to read  
9 as follows:

10 **SEC. 411.3. APPLICATION OF TIDF.**

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

17 (1) The TIDF shall not be payable on new development, or any portion  
18 thereof, for which a TIDF has been paid, in full or in part, under the prior TIDF Ordinance  
19 (former Chapter 38 of the Administrative Code as amended through June 30, 2010), except  
20 where

- 21 (A) gross square feet of use is being added to the building; or
- 22 (B) the TIDF rate for the new development is in an economic activity  
23 category with a higher fee rate than the current rate for the economic activity category under  
24 which the TIDF was originally paid, as set forth in Section 411.3(e).

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

1 (A) New development on property owned (including beneficially  
2 owned) by the City, except for that portion of the new development that may be developed by  
3 a private sponsor and not intended to be occupied by the City or other agency or entity  
4 exempted under Section 411.1 et seq., in which case the TIDF shall apply only to such non-  
5 exempted portion. New development on property owned by a private person or entity and  
6 leased to the City shall be subject to the fee, unless the City is the beneficial owner of such  
7 new development or unless such new development is otherwise exempted under this Section.  
8 Nothing in this Section shall interfere with the exclusive jurisdiction of the City's charitable  
9 trust departments under Article V of the Charter or impose the TIDF on new development by  
10 private nonprofit supporting organizations, beneficiaries, tenants, or licensees of said  
11 departments, on property under the exclusive jurisdiction of said departments. The exception  
12 established under subsection 411.3(a)(2)(A) for new development on property beneficially  
13 owned by the City shall only be applicable where the City has issued a building or site permit to  
14 the project sponsor for a new development ~~has filed an application for environmental evaluation,~~  
15 ~~a categorical exemption or a preliminary project assessment on or~~ before the effective date of  
16 Ordinance No. \_\_\_\_\_ December 31, 2013, or, for new development within the Mission Bay North  
17 Project Area, the Mission Bay South Project Area, the Hunters Point Shipyard Project Area, the  
18 Bayview Hunters Point Redevelopment Area, or the Transbay Redevelopment Project Area, the project  
19 sponsor submits proof that the sponsor has submitted to the successor agency to the former  
20 Redevelopment Agency of the City and County of San Francisco documentation comparable to that  
21 required for an application for environmental evaluation, a categorical exemption or a preliminary  
22 project assessment for the project on or before December 31, 2013.

23 (B) Any new development ~~in Mission Bay North or South~~ to the extent  
24 application of this Chapter to that development would ~~be inconsistent with~~ violate the terms of a  
25 redevelopment plan, development agreement, interagency cooperation agreement, or other agreement

1 entered into by the City that is valid and effective on the date that TIDF payments are due under  
2 Section 411.3(b). If any such redevelopment plan, development agreement, interagency cooperation  
3 agreement or other agreement permits some, but not all, of the TIDF to apply to a development, then  
4 the TIDF shall apply to the extent permitted~~the Mission Bay North Redevelopment Plan and~~  
5 ~~Interagency Cooperation Agreement or the Mission Bay South Redevelopment Plan and Interagency~~  
6 ~~Cooperation Agreement, as applicable.~~

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

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

11 (E) New development for which a project sponsor filed an application  
12 for environmental evaluation or a categorical exemption prior to April 1, 2004, and for which  
13 the City issued a building permit or site permit on or before September 4, 2008; provided  
14 however, that such new development may be subject to the TIDF imposed by Ordinance No.  
15 224-81, as amended through June 30, 2004, except that the administration, imposition, review  
16 and collection of any such fee shall be conducted in accordance with the administrative  
17 procedures set forth in Section 411.9. DBI and MTA shall make the text of Ordinance No. 224-  
18 81, as amended through June 30, 2004, available on their websites and shall provide copies  
19 of that ordinance upon request.

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

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

1 (ii) Open recreation/horticulture, as defined in Section 209.5 of  
2 this Code, including private noncommercial recreation open use, as referred to in Section  
3 221(g) of this Code;

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

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

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

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

14 (3) The exclusions from TIDF set forth in Section 411.3(a)(2)(F)(iv) and (v)  
15 (automotive services and wholesale storage of materials and equipment) shall only apply  
16 where *the City has issued a building or site permit to the* project sponsor for a new development  
17 *has filed an application for environmental evaluation, a categorical exemption or a preliminary project*  
18 *assessment for the project on or before the effective date of Ordinance No. \_\_\_\_\_ December 31,*  
19 *2013, or, for new development within the Mission Bay North Project Area, the Mission Bay South*  
20 *Project Area, the Hunters Point Shipyard Project Area, the Bayview Hunters Point Redevelopment*  
21 *Area, or the Transbay Redevelopment Project Area, the project sponsor submits proof that the sponsor*  
22 *has submitted to the successor agency to the former Redevelopment Agency of the City and County of*  
23 *San Francisco documentation comparable to that required for an application for environmental*  
24 *evaluation, a categorical exemption or a preliminary project assessment for the project, on or before*  
25 *December 31, 2013.*

1 (b) Timing of Payment. Except for those Integrated PDR projects subject to Section  
2 328 of this Code, the TIDF shall be paid prior to issuance of the first construction document,  
3 with an option for the project sponsor to defer payment until prior to issuance of the first  
4 certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with Section  
5 107A.13 of the San Francisco Building Code. Under no circumstances may any City official or  
6 agency, including the Port of San Francisco, issue a certificate of final completion and  
7 occupancy for any new development subject to the TIDF until the TIDF has been paid.

8 (c) Calculation of TIDF.

9 (1) The TIDF shall be calculated on the basis of the number of gross square  
10 feet of new development, multiplied by the square foot rate in effect at the time of ~~building or~~  
11 ~~site permit~~ issuance of the first construction document for each of the applicable economic activity  
12 categories within the new development, as provided in Subsection 411.3(e) below. An  
13 accessory use shall be charged at the same rate as the underlying use to which it is  
14 accessory, except that where any underlying use other than Residential is exempt from the  
15 TIDF under this Section, the fee shall nonetheless be charged for the accessory use unless  
16 such accessory use is otherwise exempt. Whenever any new development or series of new  
17 developments cumulatively creates more than 3,000 gross square feet of covered use within a  
18 structure, in the case of a building or site permit issued on or before January 31, 2013, or  
19 more than 800 gross square feet of covered use within a structure, in the case of a building or  
20 site permit issued on or after February 1, 2013, the TIDF shall be imposed on every square  
21 foot of such covered use (including any portion that was part of prior new development below  
22 the applicable square foot threshold).

23 (2) When calculating the TIDF for a development project in which there is a  
24 change of use such that the rate charged for the new economic activity category is higher  
25 than the rate charged for the existing economic activity category, the TIDF per square foot

1 rate for the change of use shall be the difference between the rate charged for the new use  
2 and the existing use.

3 (3) Where a new development is subject to a redevelopment plan, development  
4 agreement, interagency cooperation agreement, or other agreement entered into by the City, and under  
5 the terms of that plan or agreement, calculation of the TIDF for the development would be different  
6 from the calculation under subparagraph (2) above, the TIDF shall be calculated in accordance with  
7 the requirements of the applicable plan or agreement.

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

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

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

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

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

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

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

7 (D) Notwithstanding the foregoing, the adjustment factor shall not  
8 exceed one.

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

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

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

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

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



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

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

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

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

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

12 (i) Small Businesses. Businesses that either occupy or expand  
 13 any preexisting non-residential space, provided that: (a) the gross square footage of such  
 14 non-residential space is not greater than 5,000 square feet, and (b) the business is not  
 15 formula retail, as defined in this Code. Only the gross square footage dedicated to such  
 16 business shall be eligible for the Policy Credit.

17 (ii) Reduced Parking Developments. In zoning districts that set  
 18 a parking maximum, development projects that provide a lower number, or ratio, of off-street  
 19 parking than permitted on an as-of-right basis without conditional use authorization in Table  
 20 151.1 of this Code. The credit shall be determined by the Department as follows:

21 Max. Allowed			60% or more		
22 in Planning		More than 50%	but less	75% or more	90% of
23 Code Table	50% of Max.	but less than	than 75% of	but less than	Max. or
24 151.1	or Less	60% of Max.	Max.	90% of Max.	more
25 TIDF Credit	90%	80%	50%	20%	0%

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

5 (i) If a development project is modified for any reason after it is  
6 first approved, and such modification would result in a potential increase in the amount of  
7 Policy Credits allocated to it, the development project shall maintain the credits allocated on  
8 the list described in Section 411.3(d)(2)(A)(v). Any additional credit may only be allocated at  
9 the time such modification is approved, subject to the limits of Section 411.3(d)(2)(A)(i).

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

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

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

20 (e) TIDF Schedule. The TIDF Schedule shall be as follows:  
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22  
23  
24  
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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	\$12.64
Medical and Health Services	\$13.30
Production/Distribution/Repair	\$6.80
Retail/Entertainment	\$13.30
Visitor Services	\$12.64

Section 3. The Planning Code is hereby amended by revising Section 411.8, to read as follows:

**SEC. 411.8. CHARITABLE EXEMPTIONS.**

(a) 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.

1 (b) The TIDF shall be calculated for exempt structures in the same manner and at  
2 the same time as for all other structures. Prior to issuance of ~~a building or site permit~~ the first  
3 construction document for the development project, the sponsor may apply to the Department  
4 for an exemption under the standards set forth in subsection (a) above. If the Department  
5 determines that the sponsor is entitled to an exemption under this Section, it shall cause to be  
6 recorded a notice advising that the TIDF has been calculated and imposed upon the structure  
7 and that the structure or a portion thereof has been exempted from payment of the fee but  
8 that if the property or portion thereof loses its exempt status during the 10-year period  
9 commencing with the date of the imposition of the TIDF, then the building owner shall be  
10 subject to the requirement to pay the fee.

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

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

1           Section 4. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

5  
6           Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
7 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
8 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
9 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
10 additions, and Board amendment deletions in accordance with the "Note" that appears under  
11 the official title of the ordinance.

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14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17 By: \_\_\_\_\_  
18       DAVID A. GREENBURG  
19       Deputy City Attorney

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