

1 [Transit Impact Development Fee]

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3 **Ordinance repealing San Francisco Administrative Code Chapter 38 (Transit Impact**
4 **Development Fee) and adding a new Chapter 38 (Sections 38.1, 38.2, 38.3, 38.4, 38.5,**
5 **38.6, 38.7, 38.8, 38.9, 38.10, 38.11, 38.12, 38.13, 38.14, 38.15), to enact a new Transit**
6 **Impact Development Fee.**

7 Note: Chapter 38 is entirely new.

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

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

12 Section 1. The San Francisco Administrative Code is hereby amended by repealing
13 Chapter 38 in its entirety and adding a new Chapter 38 to read as follows:

14 **SEC. 38.1. DEFINITIONS.**

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

16 A. Accessory Use. A related minor use which is either necessary to the operation
17 or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and
18 subordinate to any such use.

19 B. Board. The Board of Supervisors of the City and County of San Francisco.

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

23 D. City. The City and County of San Francisco.

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1 E. Cultural/Institution/Education (CIE). A land use category that includes education
2 services, social services, museums and zoos, membership organizations, community
3 facilities, assembly, and private household services.

4 F. Director. The Director of Transportation of the Municipal Transportation Agency.

5 G. Entertainment Use. Space within a structure or portion thereof intended or
6 primarily suitable for the operation of a nighttime entertainment use as defined in San
7 Francisco Planning Code Section 102.17, a movie theater use as defined in San Francisco
8 Planning Code Sections 790.64 and 890.64, an adult theater use as defined in San Francisco
9 Planning Code Section 191, any other entertainment use as defined in San Francisco
10 Planning Code Sections 790.38 and 890.37, and, notwithstanding San Francisco Planning
11 Code Section 790.38, an amusement game arcade (mechanical amusement devices) use as
12 defined in San Francisco Planning Code Sections 790.4 and 890.4. Under this ordinance,
13 "entertainment use" shall include all office and other uses accessory to the entertainment use,
14 but excluding retail uses and office uses not accessory to the entertainment use.

15 H. Gross Floor Area. The total area of each floor within the building's exterior
16 walls, as defined in Section 102.9 of the San Francisco Planning Code.

17 I. Gross Square Feet of Use. The total square feet of gross floor area in a building
18 and/or space within or adjacent to a structure devoted to all uses, as defined in Section
19 38.1.AA, including any common areas exclusively serving such uses and not serving
20 residential uses. Where a structure contains more than one use, areas common to two or
21 more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary space included in
22 gross floor area that are not exclusively assigned to one use shall be apportioned among the
23 two or more uses in accordance with the relative amounts of gross floor area, excluding such
24 space, in the structure or on any floor thereof directly assignable to each use.

1 J. Hotel Use. Space within a structure or portion thereof intended or primarily
2 suitable for rooms, or suites of two or more rooms, each of which may or may not feature a
3 bathroom and cooking facility or kitchenette and is designed to be occupied by a visitor or
4 visitors to the City who pay for accommodations on a daily or weekly basis but who do not
5 remain for more than 31 consecutive days. Under this ordinance, "hotel use" shall include all
6 office and other uses accessory to the renting of guest rooms, but excluding retail uses and
7 office uses not accessory to the hotel use.

8 K. Land Use Category. A type of land use that is distinguishable by trip generation
9 rate.

10 L. Office Use/Business Services. A land use category that includes the following
11 office functions: Professional services; banking; insurance; real estate; management;
12 consulting; technical; sales; and design; the non-accessory office functions of manufacturing
13 and warehousing businesses; multimedia, software development, web design, electronic
14 commerce, information technology and other computer-based technology; and public
15 administration.

16 M. Medical and Health Services. A land use category that includes health services
17 offices, hospitals, and laboratories.

18 N. Municipal Railway; MUNI. The public transit system owned by City and under
19 the jurisdiction of the Municipal Transportation Agency.

20 O. Municipal Railway Department. The department of City under the Municipal
21 Transportation Agency that is responsible for operating and maintaining the Municipal
22 Railway.

23 P. Municipal Transportation Agency; MTA. The agency of City that has exclusive
24 charge of the construction, management, supervision, maintenance, extension, operation,
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1 use, and control of all property and financial assets of the Municipal Railway and the
2 Department of Parking and Traffic.

3 Q. Municipal Transportation Agency Board of Directors; MTAB. The governing
4 board of the MTA.

5 R. New Development. Any new construction, addition, extension, conversion, or
6 enlargement of an existing structure that includes any gross square feet of use.

7 S. Production/Distribution/Repair (PDR). A land use category that generally
8 includes industrial and light industrial activity, including the following: automobile and other
9 repair services; construction; transportation; communications; utilities; agriculture; mining;
10 manufacturing; wholesale trade; showrooms; and motion picture production and distribution.

11 T. Retail/Entertainment. A land use category that includes retail use, entertainment
12 use and personal services to the public.

13 U. Retail Use. Space within any structure or portion thereof intended or primarily
14 suitable for occupancy by persons or entities which supply commodities to customers on the
15 premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking
16 businesses, and the uses defined in Planning Code Sections 218 and 220 through 225, and
17 also including all space accessory to such retail use.

18 V. Revenue Service Hours; Service Hours. The number of hours that the Municipal
19 Railway provides service to the public on its entire fleet of buses, light rail (including
20 streetcars), and cable cars.

21 W. Service Standard; Coverage Ratio. The relationship between revenue hours of
22 service offered by the Municipal Railway and the number of trips generated by non-residential
23 uses, expressed as a ratio where the numerator equals the average daily revenue hours
24 offered by MUNI as of the effective date of this ordinance and the denominator equals the
25 estimated daily automobile and transit trips generated by non-residential land uses.

1 X. Sponsor. An applicant seeking approval for construction of a development
2 project subject to this Chapter, such applicants' successors and assigns, and/or any entity
3 that controls or is under common control with such applicant.

4 Y. Treasurer. Treasurer of the City and County of San Francisco.

5 Z. Trip Generation Rate. The total number of Municipal Railway trips generated for
6 each 1,000 square feet of development in a particular land use category, as determined by
7 the Department of City Planning or the MTA.

8 AA. Use. The purpose for which land or a structure, or both, are designed,
9 constructed, arranged or intended, or for which they are occupied or maintained, let or leased.

10 BB. Visitor Services. A land use category that includes hotel use and other
11 commercial lodging.

12 **SEC. 38.2. FINDINGS.**

13 Enacted in 1981, the City's former Transit Impact Development Fee ordinance was
14 based on the assumption that office uses place a unique burden on the Municipal Railway.
15 While office uses do place a substantial burden on MUNI, recent studies have confirmed that
16 a number of other land uses generate more trips on MUNI during all times of the day. For
17 example, retail and entertainment uses generate significantly more trips on MUNI per gross
18 square foot of space than office uses, and are expected to contribute the majority of new trips
19 on MUNI over the next 20 years. Moreover, medical uses, and cultural, institutional, and
20 educational uses generate substantially more trips on MUNI than do office uses. Industrial
21 and tourist uses also contribute substantially to the burden on MUNI. Furthermore, non-
22 residential land uses in the City are benefited by virtue of the availability of the Municipal
23 Railway as a means of transit for employees and customers.

24 The demand for public transit service in all areas of the City places a severe burden on
25 the Municipal Railway. The pace of new development outside the traditional "downtown" area

1 of the City has increased. By the year 2020, it is expected that a significant number of new
2 trips will be generated daily by non-residential development in San Francisco. As a result,
3 MUNI must build new infrastructure and add or adjust service to meet the demands of the new
4 development. To meet the growing need for greater and more efficient transit service, MUNI's
5 recently published document, "A Vision for Rapid Transit in San Francisco" ("Vision Plan")
6 proposes transit projects along 12 major corridors in San Francisco, covering all areas of the
7 City.

8 This demand must be met not only by the acquisition of new rolling stock and the
9 addition of new services and facilities, but also by the employment of additional personnel and
10 fuel to maintain and operate rolling stock, and the addition of new service hours to maintain
11 the reliability or schedule adherence of existing service.

12 The additional cost for expanding and operating, maintaining, repairing and replacing
13 MUNI's public transit vehicles, adding new facilities, and adding service hours to existing
14 service can be translated into a cost per gross square foot of commercial use in the new
15 developments. The cost of expanding current services and adding new services is
16 reasonably related to the costs that MUNI will incur as a result of the new development.

17 **SEC. 38.3. PURPOSES.**

18 In order to provide Municipal Railway services for new commercial development in the
19 City, the City must impose a fee. This fee shall be known as the Transit Impact Development
20 Fee.

21 It is the purpose of this ordinance to require sponsors of new development in the City to
22 pay a fee that is related directly to the financial burden imposed on the Municipal Railway by
23 the new development. This financial burden is measured by the cost that will be incurred by
24 MUNI to provide increased service levels to maintain an existing service standard.

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1 The Transit Impact Development Fee is the most practical and equitable method of
2 meeting the demand for additional Municipal Railway service and capital improvements for the
3 City caused by new commercial development. This fee is intended to recover only the costs
4 that the Municipal Railway will incur in the future to meet public transit service demands
5 created by new commercial development subject to the fee, including the maintenance and
6 expansion of service capacity through the addition of service hours, purchase, maintenance
7 and repair of rolling stock, installation of new lines, and addition to existing lines.

8 The rate-making process established by this ordinance is intended to identify and
9 measure the total incremental burdens imposed on MUNI by virtue of the demands created by
10 new development in the City. Such burdens are to be allocated equitably among new
11 developments in the City subject to the Transit Impact Development Fee. This fee is
12 designed to reflect the benefits MUNI confers on new commercial development by reliably and
13 efficiently carrying the passengers generated by the new development. Such benefits shall be
14 measured in terms of the costs MUNI incurs in meeting the estimated long-term public transit
15 service needs of such new development.

16 The Transit Impact Development Fee shall be collected as a condition for the issuance
17 of a certificate of final completion and occupancy for new development.

18 This fee will enable the City to pay a portion of the capital and operating costs of all
19 additional transit services in the City necessitated by new development. The fee schedule
20 shall be reviewed annually and adjusted over time to ensure that it continues to reflect the
21 projected cost of providing the additional Municipal Railway service required by new
22 developments.

23 **SEC. 38.4. IMPOSITION OF TRANSIT IMPACT DEVELOPMENT FEE.**

24 A. Each sponsor of a new development in the City shall pay to the City and County
25 of San Francisco and deliver to the Treasurer upon issuance of any temporary permit of

1 occupancy, and as a condition precedent to issuance of any certificate of final completion and
2 occupancy, whichever occurs first, for such new development, a Transit Impact Development
3 Fee ("TIDF"). The TIDF shall be calculated on the basis of the number of gross square feet of
4 use added by the new developments, multiplied by the applicable square foot rate in effect.
5 The rate shall be established as a current estimate of the total cost incurred by the City to
6 provide the additional Municipal Railway service generated by the new development over its
7 estimated useful life. For purposes of this Ordinance, the estimated useful life of a
8 development is 45 years.

9 B. No City official or agency, including the Department of Building Inspection
10 ("DBI"), may issue a certificate of final completion and occupancy for any new development
11 subject to the fee until it has received notification from the Treasurer that the TIDF as set in
12 accordance with Section 38.8 of this Chapter has been paid.

13 C. Except as provided in Section 38.4(D) of this ordinance, the fee imposed by this
14 ordinance shall be payable with respect to (1) all new developments in the City for which
15 building or site permits are issued on or after the effective date of this ordinance, and (2) all
16 new developments in the City for which sponsors have applied for, but not received, the first
17 building permit, site permit, or conditional use authorization by the Planning Department or
18 Planning Commission as of February 3, 2004.

19 D. The fee imposed by this ordinance shall not be payable on a building, or portion
20 thereof, for which a transit impact development fee has been paid, in full or in part, on new
21 office development under the prior Transit Impact Development Fee ordinance (former
22 Chapter 38 of this Administrative Code), except under the following circumstances:

23 (1) Square feet of use is to be added to the building; or
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1 (2) The building, or portion thereof, is to be altered, converted, enlarged,
2 extended, or rehabilitated to a use that is in a higher fee category than Office Use/Business
3 Services, as set forth in Section 38.5.

4 E. The fee imposed by this ordinance shall not be payable on the following types of
5 new development. In reviewing whether a development is subject to the fee, the project shall
6 be considered in its entirety. Developments may not seek multiple building permits in order to
7 avoid paying the TIDF.

8 (1) New developments proposing addition of less than 3,000 square feet of
9 use in any land use category subject to payment of the TIDF under this ordinance. Once the
10 threshold has been reached in a building, this exception will no longer apply to any further
11 new development in the same building. Moreover, once the threshold has been exceeded,
12 the sponsor shall lose its exemption on the initial 3,000 feet; *i.e.*, the sponsor shall be
13 responsible to pay the TIDF on the previously exempted portion of the building, along with its
14 payments on the further development.

15 (2) New development on property owned by the City and County of San
16 Francisco, or any of its agencies, except when the property is to be developed by a private
17 developer and not occupied by a City agency. New development on property owned by a
18 private person or entity and leased to the City and County of San Francisco, or any of its
19 agencies, shall be subject to the fee, unless otherwise exempted under this Section.

20 (3) Any major phase or development project in Mission Bay North or South to
21 the extent application of this ordinance would be inconsistent with the Mission Bay North
22 Redevelopment Plan and Interagency Cooperation Agreement or the Mission Bay South
23 Redevelopment Plan and Interagency Cooperation Agreement, as applicable.

1 (4) Those portions of new development located on property owned by the
2 United States or any of its agencies or property to be occupied exclusively by the United
3 States or any of its agencies as lessee for a period in excess of 5 years.

4 (5) New development located on property owned by the State of California or
5 any of its agencies, with the exception of such property not used exclusively for a
6 governmental or educational purpose.

7 F. The TIDF is payable on the earliest of the following dates:

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

10 (2) The date of issuance of the first temporary permit of occupancy with
11 respect to any non-residential use in the new development;

12 (3) The date of issuance of a final certificate of occupancy.

13 G. Upon payment of the fee in full to the Treasurer, and upon request of the
14 sponsor, the Treasurer shall issue a certificate that the fee has been paid. The sponsor shall
15 present such certification to DBI prior to the issuance of the final certificate of occupancy for
16 the development project. DBI shall provide notice in writing to the Treasurer, the Planning
17 Department, and MUNI at least five business days prior to issuing the final certificate of
18 occupancy for any development project subject to this Section. DBI may not issue a final
19 certificate of occupancy for any new development until it has received notice from the
20 Treasurer that the fee has been paid.

21 **SEC. 38.5. TRANSIT IMPACT DEVELOPMENT FEE SCHEDULE.**

22 This Transit Impact Development Fee Schedule is set at a level to ensure that the
23 proceeds from the Transit Impact Development Fee from each new development are
24 sufficient, including such earnings as may be derived from investment of all proceeds and
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1 amortization thereof, to pay for a portion of the capital and operating costs incurred to
2 maintain MUNI's service standard over the life of such new development.

3 The following principles have been and, in the future, shall be observed in
4 calculating the amount of the Fee:

5 (a) State, federal and private operating and capital subsidies for the cost of
6 providing service shall be assumed only when and to the extent that receipt of such subsidies
7 is reasonably probable.

8 (b) The calculation of future costs of providing service for additional
9 passengers should assume no increase in the level of crowding for the system as a whole or
10 material decreases in the frequency of service.

11 (c) The cost of electricity shall be calculated based on the price which the
12 City could receive for such power were it sold to PG&E assigned customers rather than the
13 cost at which it is furnished to the Municipal Railway by the Hetch Hetchy Water and Power
14 Department.

15 (d) In calculating revenue, a weighted average fare (reflecting the frequency
16 of trips paid by for cash fares as opposed to fast passes) shall be estimated. In making this
17 calculation, the average fare for a fast pass trip shall be determined by dividing the cost of a
18 fast pass by an estimate of the total number of trips per month (whether or not taken in the
19 peak-period) which will be taken by a fast pass purchaser. In projecting future revenues,
20 revenue shall be assumed to increase at the same rate as operating costs.

21 (e) Where feasible, actual information for the fiscal year for which the fee is
22 being calculated should be used. Where estimates must be made, those estimates should be
23 based on such information as the Director or his delegate considers reasonable for the
24 purpose. Possible changes in the operation or productivity of the Municipal Railway shall be
25 taken into account only if such changes are the announced policy of the Municipal

1 Transportation Agency and the impact of such change on costs or revenues can be estimated
2 with reasonable certainty.

3 The Transit Impact Fee Schedule shall be as follows:

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5 Land Use Category	TIDF Per Gross Square Foot of Development
6 Visitor Services	\$9.00
7 Medical and Health Services	\$14.00
8 Cultural/Institution/Education	\$14.00
9 Retail/Entertainment	\$35.00
Office Use/Business Services	\$14.00
Production/Distribution/Repair	\$9.00

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11 **SEC. 38.6. ADJUSTMENTS TO AND REVIEW OF THE TRANSIT IMPACT**
12 **DEVELOPMENT FEE SCHEDULE.**

13 (a) **Annual Adjustment.** Effective July 1st of each year, beginning with fiscal
14 year 2004-2005, the TIDF Schedule, as set forth in Section 38.5, may be adjusted, without
15 further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price
16 Index, as determined by the Controller. No later than April 15th of each year, the Director
17 shall submit his or her current TIDF Schedule to the Controller, who shall apply the price index
18 adjustment to produce a new fee schedule for the following fiscal year. No later than May
19 15th of each year, the Controller shall file a report with the MTA Board of Directors reporting
20 the new TIDF Schedule and certifying that: the fees do not produce revenue which is more
21 than the costs of providing the services for which each permit fee is assessed.

22 (b) **Five-Year Review.** Commencing five years after the effective date of this
23 ordinance, the TIDF Schedule shall be reviewed every five years by the MTA Board of
24 Directors, or more often as the MTA Board may deem necessary, and the Board of
25 Supervisors to ensure that the fee reasonably measures the cost of adding, operating, and

1 maintaining public transit service in the City as generated by new development. This review
2 shall be performed in conjunction with the five-year review of the Housing Fee (Planning Code
3 § 313.15), Child Care Fee (Planning Code § 314.7) and Inclusionary Housing Fee (Planning
4 Code § 315.8(e)).

5 The Director shall furnish the Board of Supervisors with a report regarding the
6 then-current trip generation rate necessary to provide the public transit services required by
7 new development, as well as the application of alternative revenue to pay for such services.
8 The Director shall also report the estimated useful life in years of new development, and may
9 recommend different useful-life periods for land use categories if deemed necessary or
10 desirable to ensure a fair and accurate fee schedule.

11 The Director shall also report the projected annual increases in the trip
12 generation rate required to provide the necessary transit services during the estimated useful
13 lives of new developments. Finally, the Director shall report the estimated annual rate of
14 return on the proceeds of this fee which would be invested prior to their use to provide the
15 necessary additional transit services during the useful lives of new developments.

16 After receiving these reports and making them available for public distribution,
17 the Board of Supervisors shall conduct a public hearing in which it shall consider these
18 reports, hear testimony from any interested members of the public and receive such other
19 evidence as it may deem necessary. At the conclusion of that hearing, the Board shall make
20 findings regarding whether a sufficient nexus exists between the TIDF Fee Schedule and the
21 impacts on MUNI of the new development.

22 The Board shall then establish a Transit Impact Development Fee Schedule for
23 each land use category expressed in terms of an amount per gross square foot for use in new
24 developments using the general formula: net annual cost per gross square foot of
25 development (adjusted daily trip generation rate times net annual cost to MUNI per trip) times

1 the net present value factor (cost of providing transit services over the useful life a building,
2 based on the inflation rate less the discount rate); considering the return on invested funds
3 over the useful lives of new developments,.

4 The rates of the fee schedule shall be set at an actuarially sound level to ensure
5 that the proceeds do not exceed the capital and operating costs incurred in maintaining
6 MUNI's existing service standard as directly affected by the demands of the new
7 development, including such earnings as may be derived from investment of the proceeds
8 and amortization thereof, over the life of such new developments.

9 In the event that the City and County shall impose and collect any additional
10 fees or assessments specifically to recover the costs of transit services, including transit
11 services the cost of which are included in the fee imposed under this Ordinance, the owner of
12 a development for which the Transit Impact Development Fee has been fully paid shall
13 annually receive a credit, up to the total amount of such fees or assessments, of that portion
14 of the prorated annual amount of the Transit Impact Development Fee equal to those costs of
15 transit services included in such fees or assessments which are also included in the Transit
16 Impact Development Fee. The prorated annual amount of the Transit Impact Development
17 Fee is obtained by dividing the total Transit Impact Development Fee already paid by the
18 estimated useful life of the development, in years.

19 The portion credited against such fees or assessments shall be determined by
20 comparing those costs included in the Transit Impact Development Fee and those included in
21 such fees or assessments.

22 **SEC. 38.7. USE OF PROCEEDS FROM TRANSIT IMPACT DEVELOPMENT FEE.**

23 The sums derived from the collection of the TIDF shall be held in trust by the Treasurer
24 of the City and County under Section 66006 of the Mitigation Fee Act (Cal. Gov. Code §§
25 60000 *et seq.*) and shall be distributed according to the fiscal and budgetary provisions of the

1 San Francisco Charter and the Mitigation Fee Act subject to the following conditions and
2 limitations. As determined in Sections 38.2 and 38.3 above, TIDF funds from new commercial
3 development will be used to increase revenue hours reasonably necessary to mitigate the
4 impacts of new commercial development on public transit. Such funds will be used to
5 increase Muni's capability to satisfy the demand for MUNI service from transit riders going to
6 and from the new commercial development. Eligible uses of proceeds from the TIDF,
7 including earnings from investments of such proceeds, include, but are not limited to, the
8 following: capital costs associated with establishing new transit routes, expanded transit
9 routes, and increased service on existing transit routes, including, but not limited to,
10 procurement of related items such as rolling stock, and design and construction of bus
11 shelters, stations, tracks, and overhead wires; operation and maintenance of rolling stock
12 associated with new or expanded transit routes or increases in service on existing routes;
13 capital or operating costs required to add revenue hours to existing routes even if capacity is
14 not increased; and related overhead costs. Proceeds from the TIDF may also be used for all
15 costs required to administer, enforce, or defend this ordinance.

16 **SEC. 38.8. SETTING OF FEE.**

17 Prior to obtaining a building permit for any new development in the City after the
18 effective date of this ordinance, each sponsor shall file with the Director, on such form as the
19 Director may develop, a report indicating the number of gross square feet of the new
20 development intended for a use subject to the TIDF. Each sponsor of a new development
21 who had applied for a building, site permit, or conditional use authorization, but who had not
22 obtained an approval of the building permit, site permit, or conditional use authorization by the
23 Planning Department or Planning Commission prior to February 3, 2004, shall file the same
24 report prior to obtaining a final certificate of occupancy. The Director shall determine the
25 number of gross square feet of use in each land use category that is applicable, disregarding

1 the number of gross square feet of use being retained in each such category, apply the fee
2 schedule, and determine the fee. The applicant shall be notified of the Director's
3 determination in writing. The Director shall mail a copy of his determination to the applicant.
4 The applicant may appeal the determination of the number of gross square feet of use subject
5 to the fee, the adjustment factor described in Section 38.9, or the land use category, to the
6 MTA Board of Directors in order to reduce the amount of the fee obligation. If the applicant
7 notifies the Director of its acceptance of the determination, or does not appeal to the MTAB
8 within 15 days of the date of personal service or mailing of notice of the Director's
9 determination, the Director's determination shall be final, and a notice of such determination
10 shall be provided to DBI and the Treasurer. DBI may not issue a site or building permit for
11 any new development until it has received notice from the MTA of the final determination of
12 the amount of the Transit Impact Development Fee to be paid. The MTA shall not change the
13 amount of the TIDF based on changes to the amount of gross square feet of development
14 during construction of the development unless the sponsor applies for a new building permit to
15 reflect such changes.

16 **SEC. 38.9. CREDITS FOR PRIOR USE.**

17 In determining the number of gross square feet of use to which the TIDF Schedule
18 applies, the Director shall provide for the following credits, provided that a TIDF has not been
19 paid for any prior use of the property:

20 (a) For prior non-residential uses, there shall be credit for the number of
21 gross square feet of each use on the site (that is, within the land use category of the use(s)
22 being added) that is eliminated as part of the project. A credit shall be allowed as between
23 prior uses within the same land use category or a land use category with a lower trip
24 generation rate. For example, prior office use may be credited to an application for new office
25 use or retail/entertainment use.

1 (b) For prior non-residential uses with a higher trip generation rate that are
2 being eliminated, there shall be a 100 percent credit up to the square footage of the prior use.
3 For example, a new development of 20,000 square feet of PDR use replacing 10,000 square
4 feet of office use may be credited for the 10,000 square feet of office use; the remaining
5 10,000 square feet of PDR use is subject to the TIDF.

6 (c) For prior uses being eliminated that are in the same land use category as
7 a use being added on the site, the sponsor will be entitled to a 100 percent credit for each
8 square foot of the prior use being eliminated.

9 (d) A credit for a prior use may only be given if the prior use was active on
10 the site within three years of the date of the application for a building or site permit for the
11 proposed use.

12 (e) Where a credit is authorized under subsections (a) or (b) above for
13 elimination of prior uses in a different land use category than the use being added, there shall
14 be a credit for the number of gross square feet of use being eliminated, multiplied by an
15 adjustment factor to reflect the difference between the trip generation rate of the use being
16 added and the use being eliminated. The adjustment factor shall be determined by the
17 Director as follows:

18 (1) The adjustment factor shall be a fraction, the numerator of which shall be
19 the fee rate which the Director shall determine, in consultation with the Department of City
20 Planning, applies to the land category of prior use being eliminated by the project.

21 (2) The denominator of the fraction shall be the fee rate for the use being
22 added, as used in the most recent calculation of the Transit Impact Development Fee
23 Schedule approved by the MTA Board.

24 (f) As of the effective date of this Ordinance, no sponsor shall be entitled to
25 a refund of the TIDF on a building for which the fee was paid under the former Chapter 38.

1 **SEC. 38.10. RULES AND REGULATIONS.**

2 Except as otherwise provided in this ordinance, the Municipal Railway
3 Department is empowered to adopt such rules, regulations, and administrative procedures as
4 it deems necessary to implement this Chapter, including the determination, collection, and
5 refund, and utilization of the proceeds, of the TIDF.

6 **SEC. 38.11. NONPAYMENT, RECORDATION OF NOTICE OF FEE AND NOTICE**
7 **OF DELINQUENCY, ADDITIONAL REQUEST; NOTICE OF ASSESSMENT OF INTEREST,**
8 **AND INSTITUTION OF LIEN PROCEEDINGS.**

9 A. Upon the Director's determination that a development is subject to this
10 ordinance, he or she may cause the County Recorder to record a notice that such
11 development is subject to the Transit Impact Development Fee. He shall serve or mail a copy
12 of such notice to the persons liable for payment of the fee and the owners of the real property
13 described in the notice. The notice shall include (1) a description of the real property subject
14 to the fee; (2) a statement that the development is subject to the imposition of the fee; and (3)
15 a statement that the amount of the fee to which the building is subject is determined under
16 San Francisco Administrative Code Section 38.8 and related provisions of said ordinance.

17 B. When the Director determines that the fee is due, the Director shall notify the
18 Treasurer, who shall send a request for payment to the sponsor.

19 C. Payment of the TIDF imposed by this ordinance is delinquent if (1) in the case of
20 a fee not payable in installments, the fee is not paid within 30 days of request for payment; (2)
21 in the case of a fee payable in installments (for a fee determined prior to the effective date of
22 this Ordinance), the fee installment is not paid within 30 days of the date fixed for payment.

23 D. Where the TIDF, not payable in installments, is not paid within 30 days of
24 request for payment, and where the TIDF is payable in installments (for a fee determined prior
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1 to the effective date of this Ordinance) and any installment is not paid within 30 days of the
2 date fixed for payment:

3 (1) The Treasurer or his or her designee may cause the County Recorder to
4 record a notice of delinquent TIDF which shall include: (a) the amount of the delinquent fee;
5 (b) the amount of the entire fee as reflected on the final determination and a statement of
6 whether the fee is payable in installments; (c) the fee interest and penalty then due; (d) the
7 interest and penalties that shall accrue on the delinquent fee if not promptly paid; (e) a
8 description of the real property subject to the fee; (f) notification that if the fee is not promptly
9 paid proceedings will be instituted before the Board of Supervisors to impose a lien for the
10 unpaid fee together with any penalties and interest against the real property described in the
11 delinquency notice; (g) notification of the fee payer's right to appeal the delinquency
12 determination to the MTAB within 15 days of the notice to the fee payer.

13 (2) Where the Treasurer determines to record a notice of delinquency, he or
14 she shall also serve or mail the notice of delinquent TIDF to the persons liable for the fee and
15 to the owners of the real property described on the notice.

16 (3) Where a notice of TIDF delinquency has been recorded and the
17 delinquent fee is paid or the Treasurer's determination of delinquency is reversed by appeal to
18 the MTAB or the delinquency is otherwise cured, the Treasurer shall promptly cause the
19 County Recorder to record a notice that the TIDF delinquency has been cured. Said notice
20 shall include: (a) description of the real property affected; (b) the book and page number of
21 the county record wherein the notice of delinquency was recorded; (c) the date the notice of
22 delinquency was recorded; (d) notification that the delinquency reflected on the notice of
23 delinquency was cured and the date of cure; (e) the amount of the entire fee as reflected on
24 the final determination; (f) if applicable, the amount of the fee paid to effect the cure; and (g) if
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1 applicable, a statement that the fee was payable in installments and specification of the
2 delinquency installments cured; (h) if applicable, the amount of the fee paid to effect the cure.

3 (4) The Treasurer shall serve or mail the notice that the TIDF delinquency
4 has been cured, referred to in Section 38.11.D(3) of this ordinance, to the persons liable for
5 the fee and to the owners of the real property described in such notice.

6 E. Where the TIDF, not payable in installments, is not paid within 30 days of
7 request for payment, and where the TIDF is payable in installments (for a fee determined prior
8 to the effective date of this Ordinance) and the installment is not paid within 30 days of the
9 date fixed for payment, the Treasurer or his or her designee shall mail an additional request
10 for payment and notice to the owner stating the following:

11 (1) If the amount due is not paid within 30 days of the date of mailing the
12 additional request and notice, interest at the rate of one and one-half percent per month or
13 portion thereof shall be assessed upon the fee or installment due.

14 (2) With respect to both non-installment and installment fees, if the account is
15 not current within 60 days of the date of mailing the additional request and notice, the
16 Treasurer shall institute proceedings to record a lien in accordance with Section 38.12 for the
17 entire balance and any accrued interest against the property upon which the fee is owed.

18 F. Thirty days after mailing the additional request for payment, the Treasurer may
19 assess interest as specified in paragraph 38.11.E(1) above. Sixty days after mailing the
20 additional request for payment and notice, the Treasurer may institute lien proceedings as
21 specified in Section 38.12.

22 G. The Treasurer shall submit a report to the Director on a quarterly basis of all
23 fees collected for the previous quarter, which report shall include the property address, name
24 of sponsor or owner of the property, and the amount of the fee, including interest, if any,
25 collected.

1 **SEC. 38.12. LIEN PROCEEDINGS; NOTICE.**

2 A. If payment of the fee not payable in installments is not received within 30 days
3 following mailing of the additional request and notice, or if with respect to installment
4 payments, the account is not brought current within 60 days of the mailing of the additional
5 request and notice, the Treasurer shall initiate proceedings in accordance with Article XX of
6 Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of
7 the TIDF, including interest on the unpaid fee or installments, a lien against all parcels used
8 for the development project. The Treasurer shall send all notices required by that Article to
9 the owner of the property as well as the sponsor. The Treasurer shall also prepare a
10 preliminary report notifying the sponsor of a hearing to confirm such report by the Board of
11 Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall
12 contain the sponsor's name, a description of the sponsor's development project, a description
13 of the parcels of real property to be encumbered as set forth in the Assessor's Map Books for
14 the current year, a description of the alleged violation of this ordinance, and shall fix a time,
15 date, and place for hearing. The Treasurer shall cause this report to be mailed to the sponsor
16 and each owner of record of the parcels of real property subject to lien. Except for the release
17 of the lien recording fee authorized by Administrative Code Section 10.237, all sums collected
18 by the Tax Collector under this ordinance shall be held in trust by the Treasurer and
19 distributed as provided in Section 38.6 of this Chapter.

20 B. Any notice required to be given to a sponsor or owner shall be sufficiently given
21 or served upon the sponsor or owner for all purposes hereunder if personally served upon the
22 sponsor or owner or if deposited, postage prepaid, in a post office letterbox addressed in the
23 name of the sponsor or owner at the official address of the sponsor or owner maintained by
24 the Tax Collector for the mailing of tax bills or, if no such address is available, to the sponsor
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1 at the address of the development project, and to the applicant for the site or building permit
2 at the address on the permit application.

3 **SEC. 38.13. MANNER OF GIVING NOTICES.**

4 Any notice required to be given under this ordinance to a sponsor or owner shall be
5 sufficiently given or served upon the sponsor or owner for all purposes under this ordinance if
6 personally served upon the sponsor or owner, or if deposited, postage prepaid, in a post office
7 letter box addressed in the name of the sponsor or owner at the official address of the
8 sponsor or owner maintained by the Tax Collector of the City and County for the mailing of tax
9 bills; or, if no such address is available, to the sponsor at the address of the real property to
10 which the public transit service was provided.

11 **SEC. 38.14. SEVERABILITY.**

12 The provisions of this ordinance shall not apply to any person, association, corporation
13 or to any property as to whom or which it is beyond the power of the City and County of San
14 Francisco to impose the fee herein provided. If any sentence, clause, section or part of this
15 ordinance, or any fee imposed upon any person or entity is found to be unconstitutional, illegal
16 or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause,
17 sentence, section or part of this ordinance, or person or entity; and shall not affect or impair
18 any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance,
19 or its effect on other persons or entities. It is hereby declared to be the intention of the Board
20 of Supervisors of the City and County that this ordinance would have been adopted had such
21 unconstitutional, illegal or invalid sentence, clause, section or part of this ordinance not been
22 included herein; or had such person or entity been expressly exempted from the application of
23 this ordinance. To this end the provisions of this ordinance are severable.

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1 **SEC. 38.15. CHARITABLE EXEMPTIONS.**

2 A. When the property or a portion thereof will be exempt from real property taxation
3 under California Constitution, Article XIII, Section 4, as implemented by California Revenue
4 and Taxation Code Section 214, then the sponsor shall not be required to pay the TIDF
5 attributed to the new use in the exempt property or portion thereof, so long as the property or
6 portion thereof continues to enjoy the aforementioned exemption from real property taxation.

7 B. The TIDF shall be calculated for exempt structures in the same manner and at
8 the same time as for all other structures. The sponsor may apply to the MTA for an
9 exemption under the standards set forth herein. In the event the Agency determines that the
10 sponsor is entitled to an exemption under this Section, it shall cause to be recorded a notice
11 advising that the TIDF has been calculated and imposed upon the structure and that the
12 structure or a portion thereof has been exempted from payment of the fee but that if the
13 property or portion thereof loses its exempt status during the 10-year period commencing with
14 the date of the imposition of the TIDF, then the building owner shall be subject to the
15 requirement to pay the fee.

16 C. If within 10 years from the date of the issuance of the Certificate of Final
17 Completion and Occupancy, the exempt property or portion thereof loses its exempt status,
18 then the property owner shall, within 90 days thereafter, be obligated to pay the TIDF,
19 reduced by an amount reflecting the duration of the charitable exempt status in relation to the
20 useful life estimate used in determining the TIDF for that structure. The amount remaining to
21 be paid shall be determined by recalculating the fee using a useful life equal to the useful life
22 used in the initial calculation minus the number of years during which the exempt status has
23 been in effect.

24 (d) In the event a property owner fails to pay a fee within the 90-day period, a notice
25 for request of payment shall be served by the Treasurer under Section 38.11.B of this

1 Chapter. Thereafter, upon nonpayment, a lien proceeding shall be instituted under Section
2 38.12 of this Chapter.

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

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7 By: _____
8 Robin M. Reitzes
9 Deputy City Attorney

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