

File No. 091275

Committee Item No. 5

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date March 22, 2010

Board of Supervisors Meeting Date \_\_\_\_\_

#### Cmte Board

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|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/> | <input type="checkbox"/>            | Resolution                                   |
| *                        | <input checked="" type="checkbox"/> | Ordinance                                    |
|                          | <input checked="" type="checkbox"/> | Legislative Digest                           |
|                          | <input type="checkbox"/>            | Budget Analyst Report                        |
|                          | <input type="checkbox"/>            | Legislative Analyst Report                   |
|                          | <input type="checkbox"/>            | Youth Commission Report                      |
|                          | <input type="checkbox"/>            | Introduction Form (for hearings)             |
|                          | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
|                          | <input type="checkbox"/>            | MOU  |
|                          | <input type="checkbox"/>            | Grant Information Form                       |
|                          | <input type="checkbox"/>            | Grant Budget                                 |
|                          | <input type="checkbox"/>            | Subcontract Budget                           |
|                          | <input type="checkbox"/>            | Contract/Agreement                           |
|                          | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
|                          | <input type="checkbox"/>            | Award Letter                                 |
|                          | <input type="checkbox"/>            | Application                                  |
|                          | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Eastern Neighborhoods Citizens Advisory Committee Recommendation</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Resolution No. 10015</u>                         |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Planning Commission Resolution No. 10017</u>                         |
| <input type="checkbox"/>            | <input type="checkbox"/> | _____   |
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Completed by: Alisa Somera Date March 18, 2010

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document can be found in the file and the online version.

1 [Development Impact and In-Lieu Fees]

2

3 **Ordinance amending the San Francisco Planning Code to create Article 4 for**  
4 **development impact fees and requirements, move Planning Code Sections 135(j),**  
5 **135.3(d), 135.3(e), 139, 143, 149, a portion of 249.33, 313-313.15, 314-314.8, 315-315.9,**  
6 **318-318.9, 319-319.7, 326-326.8, 327-327.6, and 331-331.6 and Chapter 38 of the San**  
7 **Francisco Administrative Code (Transit Impact Development Fee) to Article 4, and**  
8 **renumber and amend the sections; to provide that the Department of Building**  
9 **Inspection (DBI) will collect the development fees prior to issuance of the first building**  
10 **permit or other document authorizing project construction and verify that any in-kind**  
11 **public improvements required in lieu of a development fee are implemented prior to**  
12 **issuance of the first certificate of occupancy; to allow a project sponsor to defer**  
13 **payment of a development fee upon agreeing to pay a deferral surcharge, which option**  
14 **shall expire after three years unless further extended; to add introductory sections to**  
15 **Article 4 for standard definitions and procedures, delete duplicative code provisions**  
16 **and use consistent definitions, language and organization throughout; to require**  
17 **annual Citywide development fee reports and fee adjustments, and development fee**  
18 **evaluations every five years; to provide that the ordinance's operative date is May 15,**  
19 **2010; and to instruct the publisher to put a note at the original location of the**  
20 **renumbered sections stating that the text of those sections has been moved and**  
21 **providing the new section number; adopting findings, including Section 302,**  
22 **environmental findings, and findings of consistency with the General Plan and**  
23 **Planning Code Section 101.1.**

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

Board amendment deletions are ~~striketrough~~ normal.

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

Section 1. Findings. The Board of Supervisors hereby finds that:

A. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 091275 and is incorporated herein by reference.

B. Pursuant to Section 302 of the Planning Code, the Board finds that this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. 18015 and the Board incorporates such reasons herein by reference. A copy of Planning Commission Resolution No. 18015 is on file with the Board of Supervisors in File No. 091275.

C. This ordinance is in conformity with the General Plan and the Priority Policies of Planning Code Section 101.1 for the reasons set forth in Planning Commission Resolution No. 18015 and the Board incorporates those findings herein by reference.

D. In March, 2008, San Francisco published its Citywide Development Impact Fee Study Consolidated Report. The purpose of the Study was to evaluate the overall state, effectiveness, and consistency of the City's impact fee collection process and to identify improvements. Among other things, the Study cited the City's decentralized process as a problem. Centralizing the collection of development impact and in-lieu fees within the Department of Building Inspection and providing for an auditing and dispute-resolution function within DBI will further the City's goals of streamlining the process, ensuring that fees are accurately assessed and collected in a timely manner, informing the public of the fees assessed and collected, and implementing some suggestions in the Consolidated Report.

1 E. Organizing all of the City's development impact fees and Planning Code  
2 requirements that authorize the payment of in-lieu fees into one article and putting standard  
3 language into introductory sections will make the requirements easier to locate and allow for  
4 the deletion of duplicative and potentially inconsistent provisions.

5 F. The City imposes a variety of development fees on land-use development  
6 projects; the timing for collection of these fees varies. Also, typical economic cycles create  
7 volatility in the building and construction industries that has negative impacts on the  
8 availability of financing, greatly affecting the viability of a range of development projects. The  
9 current global economic crisis has exceeded both the depth and breadth of typical economic  
10 downturns. These boom-and-bust economic cycles create financial and other hardships for  
11 both project sponsors and the City's permit-issuing departments. By enacting this procedure  
12 to standardize the collection and timing of payment of development impact and in-lieu fees  
13 assessed by the City and give the project sponsor the option to defer the payment of the fees,  
14 the City intends not only to streamline the process but also to mitigate the financial hardships  
15 caused by economic cycles in general and the global economic crisis in particular. This will  
16 allow project sponsors to proceed to obtain their entitlements for development projects that  
17 would otherwise be unable to proceed under adverse conditions and enable a better-  
18 managed economic recovery.

19 Section 2. The San Francisco Planning Code is hereby amended by adding Article 4,  
20 to read as follows:

21 ARTICLE 4

22 DEVELOPMENT IMPACT FEES AND PROJECT REQUIREMENTS THAT AUTHORIZE THE  
23 PAYMENT OF IN-LIEU FEES

24 SEC. 401. DEFINITIONS. (a) In addition to the specific definitions set forth elsewhere in this  
25 Article, the following definitions shall govern interpretation of this Article:

1           (1) "Affordable housing project." A housing project containing units constructed to satisfy  
2 the requirements of Sections 413.5, 413.8, 415.4, or 4.5.5 of this Article, or receiving funds from the  
3 Citywide Affordable Housing Fund.

4           (2) "Affordable to a household." A purchase price that a household can afford to pay based  
5 on an annual payment for all housing costs of 33 percent of the combined household annual net  
6 income, a 10 percent down payment, and available financing, or a rent that a household can afford to  
7 pay based on an annual payment for all housing costs of 30 percent of the combined annual net income.

8           (3) "Affordable to qualifying households":

9           (A) With respect to owned units, the average purchase price on the initial sale of all  
10 affordable owned units in an affordable housing project shall not exceed the allowable average  
11 purchase price. Each unit shall be sold:

12           (i) Only to households with an annual net income equal to or less than that of a household  
13 of moderate income; and

14           (ii) At or below the maximum purchase price.

15           (B) With respect to rental units in an affordable housing project, the average annual rent  
16 shall not exceed the allowable average annual rent. Each unit shall be rented:

17           (i) Only to households with an annual net income equal to or less than that of a household  
18 of lower income;

19           (ii) At or less than the maximum annual rent.

20           (4) "Allowable average purchase price":

21           (A) For all affordable one-bedroom units in a housing project, a price affordable to a two-  
22 person household of median income as set forth in Title 25 of the California Code of Regulations  
23 Section 6932 ("Section 6932") on January 1st of that year;

24           (B) For all affordable two-bedroom units in a housing project, a price affordable to a three-  
25 person household of median income as set forth in Section 6932 on January 1st of that year;

1           (C) For all affordable three-bedroom units in a housing project, a price affordable to a four-  
2 person household of median income as set forth in Section 6932 on January 1st of that year;

3           (D) For all affordable four-bedroom units in a housing project, a price affordable to a five-  
4 person household of median income as set forth in Section 6932 on January 1st of that year.

5           (1) "Affordable to qualifying middle income households":

6           (A) With respect to owned units, the average purchase price on the initial sale of all  
7 qualifying middle income units shall not exceed the allowable average purchase price deemed  
8 acceptable for households with an annual gross income equal to or less than the qualifying limits for a  
9 household of middle income, adjusted for household size. This purchase price shall be based on  
10 household spending of 35% of income for housing, and shall only apply to initial sale, and not for the  
11 life of the unit.

12           (B) With respect to rental units, the average annual rent--including the cost of utilities paid  
13 by the tenant according to the HUD utility allowance established by the San Francisco Housing  
14 Authority -- for qualifying middle income units shall not exceed the allowable average purchase price  
15 deemed acceptable for households with an annual gross income equal to or less than the qualifying  
16 limits for a household of middle income, adjusted for household size. This price restriction shall exist  
17 for the life of the unit.

18           (5) "Allowable average annual rent":

19           (A) For all affordable one-bedroom units in a housing project, 18 percent of the median  
20 income for a household of two persons as set forth in Section 6932 on January 1st of that year;

21           (B) For all affordable two-bedroom units in a housing project, 18 percent of the median  
22 income for a household of three persons as set forth in Section 6932 on January 1st of that year;

23           (C) For all affordable three-bedroom units in a housing project, 18 percent of the median  
24 income for a household of four persons as set forth in Section 6932 on January 1st of that year;

1           (D) For all affordable four-bedroom units in a housing project, 18 percent of the median  
2 income for a household of five persons as set forth in Section 6932 on January 1st of that year.

3           (6) "Annual gross income." Gross income as defined in CCR Title 25, Section 6914, as  
4 amended from time to time, except that MOH may, in order to promote consistency with the procedures  
5 of the San Francisco Redevelopment Agency, develop an asset test that differs from the State definition  
6 if it publishes that test in the Procedures Manual.

7           (7) "Annual net income." Net income as defined in Title 25 of the California Code of  
8 Regulations Section 6916.

9           (8) "Average annual rent." The total annual rent for the calendar year charged by a housing  
10 project for all affordable rental units in the project of an equal number of bedrooms divided by the total  
11 number of affordable units in the project with that number of bedrooms.

12           (9) "Average purchase price." The purchase price for all affordable owned units in an  
13 affordable housing project of an equal number of bedrooms divided by the total number of affordable  
14 units in the project with that number of bedrooms.

15           (10) "Balboa Park Community Improvements Fund." The fund into which all fee revenue the  
16 City collects from the Balboa Park Impact Fee is deposited.

17           (11) "Balboa Park Community Improvements Program." The program intended to implement  
18 the community improvements identified in the Balboa Park Area Plan, as articulated in the Balboa  
19 Park Community Improvements Program Document on file with the Clerk of the Board.

20           (12) "Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of new  
21 development in the Balboa Park Program Area, as described in the findings in Section 422.1.

22           (13) "Balboa Park Program Area." The Balboa Park Plan Area in Figure 1 of the Balboa  
23 Park Station Area Plan of the San Francisco General Plan.

24           (14) "Base service standard." The relationship between revenue service hours offered by the  
25 Municipal Railway and the number of automobile and transit trips estimated to be generated by certain

1 non-residential uses, expressed as a ratio where the numerator equals the average daily revenue  
2 service hours offered by MUNI and the denominator equals the daily automobile and transit trips  
3 generated by non-residential land uses as estimated by the TIDF Study or updated under Section 411.5  
4 of this Article.

5 (15) "Base service standard fee rate." The TIDF that would allow the City to recover the  
6 estimated costs incurred by the Municipal Railway to meet the demand for public transit resulting from  
7 new development in the economic activity categories for which the fee is charged, after deducting  
8 government grants, fare revenue, and costs for non-vehicle maintenance and general administration.

9 (16) "Board" or "Board of Supervisors." The Board of Supervisors of the City and County of  
10 San Francisco.

11 (17) "Child-care facility." A child-care facility as defined in California Health and Safety  
12 Code Section 1596.750.

13 (18) "Child-care provider." A provider as defined in California Health and Safety Code  
14 Section 1596.791.

15 (19) "City" or "San Francisco." The City and County of San Francisco.

16 (20) "Commercial Space Subject to the Market and Octavia Community Infrastructure  
17 Impact Fee." For each net addition of occupiable square feet within the Program Area which results in  
18 an additional commercial unit or any increased commercial capacity that is beyond 20 percent of the  
19 non-residential capacity at the time that requirements originally became effective.

20 (21) "Commercial development project." Any new construction, addition, extension,  
21 conversion or enlargement, or combination thereof, of an existing structure which includes any  
22 occupied floor area of commercial use; provided, however, that for projects that solely comprise an  
23 addition to an existing structure which would add occupied floor area in an amount less than 20  
24 percent of the occupied floor area of the existing structure, the provisions of this Article shall only  
25 apply to the new occupied square footage.



1           (22) "Commercial use." Any structure or portion thereof intended for occupancy by retail or  
2 office uses that qualify as an accessory use, as defined and regulated in Sections 204 through 204.5 of  
3 this Code.

4           (23) "Commission" or "Planning Commission." The San Francisco Planning Commission.

5           (24) "Community apartment." As defined in San Francisco Subdivision Code Section  
6 1308(b).

7           (25) "Community facilities." All uses as defined under Section 209.4(a) and 209.3(d) of this  
8 Code.

9           (26) "Condition of approval" or "Conditions of approval." A condition or set of written  
10 conditions imposed by the Planning Commission or another permit-approving or issuing City agency  
11 or appellate body to which a project applicant agrees to adhere and fulfill when it receives approval  
12 for the construction of a development project subject to this Article .

13           (27) "Condominium." As defined in California Civil Code Section 783.

14           (28) "Cultural/Institution/Education (CIE)." An economic activity category subject to the  
15 TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and (i) and  
16 217(f)-(i) of this Code; child care facilities; museums and zoos; and community facilities , as defined in  
17 Sections 209.4 and 221(a)-(c) of this Code.

18           (29) "DBI." The San Francisco Department of Building Inspection.

19           (30) "Dedicated." Legally transferred to the City and County of San Francisco, including all  
20 relevant legal documentation, at no cost to the City.

21           (31) "Dedicated site." The portion of site proposed to be legally transferred at no cost to the  
22 City and County of San Francisco under the requirements of this section.

23           (32) "Department" or "Planning Department." The San Francisco Planning Department or  
24 the Planning Department's designee, including the Mayor's Office of Housing and other City agencies  
25 or departments.

1           (33) "Designated affordable housing zones." For the purposes of implementing the Eastern  
2 Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section 736 and the  
3 Mixed Use Residential District defined in Section 841.

4           (34) "Development fee." Either a development impact fee or an in-lieu fee. It shall not  
5 include a fee for service or any time and material charges charged for reviewing or processing permit  
6 applications.

7           (35) "Development Fee Collection Unit" or "Unit." The Development Fee Collection Unit at  
8 DBI.

9           (36) "Development impact fee." A fee imposed on a development project as a condition of  
10 approval to mitigate the impacts of increased demand for public services, facilities or housing caused  
11 by the development project that may or may not be an impact fee governed by the California Mitigation  
12 Fee Act (California Government Code Section 66000 et seq.).

13           (37) "Development impact requirement." A requirement to provide physical improvements,  
14 facilities or below market rate housing units imposed on a development project as a condition of  
15 approval to mitigate the impacts of increased demand for public services, facilities or housing caused  
16 by the development project that may or may not be governed by the California Mitigation Fee Act  
17 (California Government Code Section 66000 et seq.).

18           (38) "Development project." A project that is subject to a development impact or in-lieu fee  
19 or development impact requirement.

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

1           (40) "Director." The Director of Planning or his or her designee.

2           (41) "DPW." The Department of Public Works.

3           (42) "Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the City to  
4 mitigate impacts of new development in the Eastern Neighborhoods Program Area, as described in the  
5 Findings in Section 423.1

6           (43) "Eastern Neighborhoods Public Benefits Fund." The fund into which all fee revenue  
7 collected by the City from the Eastern Neighborhoods Impact Fee is deposited.

8           (44) "Eastern Neighborhoods Public Benefits Program." The program intended to implement  
9 the community improvements identified in the four Area Plans affiliated with the Eastern  
10 Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace Square/Potrero Hill), as  
11 articulated in the Eastern Neighborhoods Public Benefits Program Document, on file with the Clerk of  
12 the Board in File No. 081155.)

13           (45) "Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area in  
14 Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco General Plan.

15           (46) "Economic activity category." Under the TIDF, one of the following six categories of  
16 non-residential uses: Cultural/Institution/Education (CIE), Management, Information and Professional  
17 Services (MIPS), Medical and Health Services, Production/Distribution/Repair (PDR),  
18 Retail/Entertainment, and Visitor Services.

19           (47) "Entertainment development project." Any new construction, addition, extension,  
20 conversion, or enlargement, or combination thereof, of an existing structure which includes any gross  
21 square feet of entertainment use.

22           (48) "Entertainment use." Space within a structure or portion thereof intended or primarily  
23 suitable for the operation of a nighttime entertainment use as defined in Section 102.17 of this Code, a  
24 movie theater use as defined in Sections 790.64 and 890.64 of this Code, an adult theater use as defined  
25 in Sections 790.36 and 890.36 of this Code, any other entertainment use as defined in Sections 790.38

1 and 890.37 of this Code, and, notwithstanding Section 790.38 of this Code, an amusement game arcade  
2 (mechanical amusement devices) use as defined in Sections 790.4 and 890.4 of this Code. Under this  
3 Article, "entertainment use" shall include all office and other uses accessory to the entertainment use,  
4 but excluding retail uses and office uses not accessory to the entertainment use.

5 (49) "First certificate of occupancy." Either a temporary certificate of occupancy or a  
6 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section  
7 109A, whichever is issued first.

8 (50) "First construction document." As defined in Section 107A.13.1 of the San Francisco  
9 Building Code.

10 (51) "Gross floor area." The total area of each floor within the building's exterior walls, as  
11 defined in Section 102.9(b)(12) of this Code.

12 (52) "Gross square feet of use." With respect to the TIDF, the total square feet of gross floor  
13 area in a building and/or space within or adjacent to a structure devoted to all uses covered by the  
14 TIDF, including any common areas exclusively serving such uses and not serving residential uses.  
15 Where a structure contains more than one use, areas common to two or more uses, such as lobbies,  
16 stairs, elevators, restrooms, and other ancillary spaces included in gross floor area that are not  
17 exclusively assigned to one uses shall be apportioned among the two or more uses in accordance with  
18 the relative amounts of gross floor area, excluding such space, in the structure or on any floor thereof  
19 directly assignable to each use.

20 (53) "Gross square footage." The meaning set forth in Section 102.9 of this Code.

21 (54) "Hotel development project." Any new construction, addition, extension, conversion, or  
22 enlargement, or combination thereof, of an existing structure which includes any gross square feet of  
23 hotel use.

24 (55) "Hotel" or "Hotel use." Space within a structure or portion thereof intended or primarily  
25 suitable for rooms, or suites of two or more rooms, each of which may or may not feature a bathroom

1 and cooking facility or kitchenette and is designed to be occupied by a visitor or visitors to the City who  
2 pays for accommodations on a daily or weekly basis but who do not remain for more than 31  
3 consecutive days. Under this Article "hotel use" shall include all office and other uses accessory to the  
4 renting of guest rooms, but excluding retail uses and office uses not accessory to the hotel use.

5 (56) "Household." Any person or persons who reside or intend to reside in the same housing  
6 unit.

7 (57) "Household of lower income." A household composed of one or more persons with a  
8 combined annual net income for all adult members which does not exceed the qualifying limit for a  
9 lower-income family of a size equivalent to the number of persons residing in such household, as set  
10 forth for the County of San Francisco in Title 25 of the California Code of Regulations Section 6932.

11 (58) "Household of median income." A household composed of one or more persons with a  
12 combined annual net income for all adult members which does not exceed the qualifying limit for a  
13 median-income family of a size equivalent to the number of persons residing in such household, as set  
14 forth for the County of San Francisco in Title 25 of the California Code of Regulations Section 6932.

15 (59) "Household of moderate income." A household composed of one or more persons with a  
16 combined annual net income for all adult members which does not exceed the qualifying limit for a  
17 moderate-income family of a size equivalent to the number of persons residing in such household, as set  
18 forth for the County of San Francisco in Title 25 of the California Code of Regulations Section 6932.

19 (60) Housing developer." Any business entity building housing units which receives a  
20 payment from a sponsor for use in the construction of the housing units. A housing developer may be  
21 (a) the same business entity as the sponsor, (b) an entity in which the sponsor is a partner, joint  
22 venturor, or stockholder, or (c) an entity in which the sponsor has no control or ownership.

23 (61) "Housing project." Any development which has residential units as defined in the  
24 Planning Code, including but not limited to dwellings, group housing, independent living units, and  
25 other forms of development which are intended to provide long-term housing to individuals and

1 households. "Housing project" shall not include that portion of a development that qualifies as an  
2 Institutional Use under the Planning Code. "Housing project" for purposes of this Program shall also  
3 include the development of live/work units as defined by Section 102.13 of this Code. Housing project  
4 for purposes of this Program shall mean all phases or elements of a multi-phase or multiple lot  
5 residential development.

6 (62) "Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing Code  
7 Section 401.

8 (63) "Improvements Fund." The fund into which all revenues collected by the City for each  
9 Program Area's impact fees are deposited.

10 (64) "In-Kind Agreement." An agreement acceptable in form and substance to the City  
11 Attorney and the Director of Planning between a project sponsor and the Planning Commission,  
12 subject to approval by the Planning Commission in its sole discretion, to provide a specific set of  
13 community improvements at a specific phase of construction in lieu of contribution to the relevant  
14 Improvements Fund. The In-Kind Agreement shall also mandate a covenant of the project sponsor to  
15 reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and  
16 monitoring compliance with the In-Kind Agreement. The City shall also require the project sponsor to  
17 provide a letter of credit or other instrument acceptable in form and substance to the City Attorney and  
18 the Planning Department to secure the City's right to receive payment as described in the preceding  
19 sentence.

20 (65) "Infrastructure." Open space and recreational facilities; public realms improvements  
21 such as pedestrian improvements and streetscape improvements; public transit facilities; and  
22 community facilities such as libraries, child care facilities, and community centers.

23 (66) "In lieu fee." A fee paid by a project sponsor in lieu of complying with a requirement of  
24 this Code and that is not a development impact fee governed by the Mitigation Fee Act.

1           (67) "Interim Guidelines" shall mean the Office Housing Production Program Interim  
2 Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

3           (68) "Licensed Child-care facility." A child-care facility which has been issued a valid  
4 license by the California Department of Social Services pursuant to California Health and Safety Code  
5 Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.

6           (69) "Live/work project." A housing project containing more than one live/work unit.

7           (70) "Live/work unit" shall be as defined in Section 102.13 of this Code.

8           (71) "Long term housing." Housing intended for occupancy by a person or persons for 32  
9 consecutive days or longer.

10           (72) "Low income." For purposes of this Article, up to 80% of median family income for the  
11 San Francisco PMSA, as calculated and adjusted by the United States Department of Housing and  
12 Urban Development (HUD) on an annual basis, except that as applied to housing-related purposes  
13 such as the construction of affordable housing and the provision of rental subsidies with funds from the  
14 SOMA Stabilization Fund established in Section 418.7, it shall mean up to 60% of median family  
15 income for the San Francisco PMSA, as calculated and adjusted by HUD on an annual basis.

16           (73) "Management, Information and Professional Services (MIPS). An economic activity  
17 category under the TIDF that includes, but is not limited to, office use; medical offices and clinics, as  
18 defined in Section 890.114 of this Code; business services, as defined in Section 890.111 of this Code;  
19 Integrated PDR, as defined in Section 890.49 of this Code, and Small Enterprise Workspaces, as  
20 defined in Section 227(t) of this Code.

21           (74) "Market and Octavia Community Improvements Fund" The fund into which all fee  
22 revenue collected by the City from the Market and Octavia Community Improvements Fee is deposited.

23           (75) "Market and Octavia Community Improvements Impact Fee." The fee collected by the  
24 City to mitigate impacts of new development in the Market and Octavia Program Area, as described in  
25 the findings in Section 421.1.

1           (76) "Market and Octavia Community Improvements Program." The program intended to  
2 implement the community improvements identified in the Market and Octavia Area Plan, as articulated  
3 in the Market and Octavia Community Improvements Program Document on file with the Clerk of the  
4 Board in File No. 071157.)

5           (77) "Market and Octavia Program Area." The Market and Octavia Plan Area in Map 1  
6 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan, which  
7 includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few parcels zoned RH-1  
8 or RH-2, and those parcels within the Van Ness and Market Downtown Residential Special Use District  
9 (VMDRSUD).

10           (78) "Market rate housing." Housing constructed in the principal project that is not subject  
11 to sales or rental restrictions.

12           (79) "Maximum annual rent." The maximum rent that a housing developer may charge any  
13 tenant occupying an affordable unit for the calendar year. The maximum annual rent shall be 30  
14 percent of the annual income for a lower-income household as set forth in Section 6932 on January 1st  
15 of each year for the following household sizes:

16           (A) For all one-bedroom units, for a household of two persons;

17           (B) For all two-bedroom units, for a household of three persons;

18           (C) For all three-bedroom units, for a household of four persons;

19           (D) For all four-bedroom units, for a household of five persons.

20           (19) "Maximum purchase price." The maximum purchase price that a household of moderate  
21 income can afford to pay for an owned unit based on an annual payment for all housing costs of 33  
22 percent of the combined household annual net income, a 10 percent down payment, and available  
23 financing, for the following household sizes:

24           (A) For all one-bedroom units, for a household of two persons;

25           (B) For all two-bedroom units, for a household of three persons;



1           (C) For all three-bedroom units, for a household of four persons;

2           (D) For all four-bedroom units, for a household of five persons.

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

7           (81) "Middle Income Household." A household whose combined annual gross income for all  
8 members is between 120 percent and 150 percent of the local median income for the City and County of  
9 San Francisco, as calculated by the Mayor's Office of Housing using data from the United States  
10 Department of Housing and Urban Development (HUD) and adjusted for household size or, if data  
11 from HUD is unavailable, as calculated by the Mayor's Office of Housing using other publicly  
12 available and credible data and adjusted for household size.

13           (82) "MOCD." The Mayor's Office of Community Development.

14           (83) "MOH." The Mayor's Office of Housing.

15           (84) "MTA." The Municipal Transportation Agency.

16           (85) "MTA Director." The Director of MTA or his or her designee.

17           (86) "Municipal Railway; MUNI." The public transit system owned by the City and under the  
18 jurisdiction of the MTA.

19           (87) "Net addition." The total amount of gross floor area defined in Planning Code Section  
20 102.9 to be occupied by a development project, less the gross floor area existing in any structure  
21 demolished or retained as part of the proposed development project that had been occupied by, or  
22 primarily serving, any residential, non-residential, or PDR use for five years prior to the Planning  
23 Commission or Planning Department approval of a development project subject to this Article, or for  
24 the life of the structure demolished or retained, whichever is shorter.

1           (88) "Net addition of occupiable square feet of commercial use." Occupied floor area, as  
2 defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-residential use  
3 excluding common areas such as hallways, maintenance facilities and lobbies, less the occupied floor  
4 area in any structure demolished or rehabilitated as part of the proposed commercial development  
5 project which occupied floor area was used primarily and continuously for commercial use and was  
6 not accessory to any use other than residential use for at least five years prior to Planning Department  
7 approval of a residential development project subject to this Article, or for the life of the structure  
8 demolished or rehabilitated, whichever is shorter.

9           (89) Net addition of gross square feet of entertainment space." Gross floor area as defined in  
10 Section 102.9 of this Code to be occupied by, or primarily serving, entertainment use, less the gross  
11 floor area in any structure demolished or rehabilitated as part of the proposed entertainment  
12 development project that was used primarily and continuously for entertainment, hotel, office, research  
13 and development, or retail use and was not accessory to any use other than entertainment, hotel, office,  
14 research and development, or retail use, for five years prior to Commission approval of an  
15 entertainment development project subject to this Article, or for the life of the structure demolished or  
16 rehabilitated, whichever is shorter, so long as such space was subject to Section 413.1 et seq. of this  
17 Article or the Interim Guidelines.

18           (90) "Net addition of gross square feet of hotel space." Gross floor area as defined in Section  
19 102.9 of this Code to be occupied by, or primarily serving, hotel use, less the gross floor area in any  
20 structure demolished or rehabilitated as part of the proposed hotel development project space used  
21 primarily and continuously for office or hotel use and not accessory to any use other than office or  
22 hotel use for five years prior to Commission approval of a hotel development project subject to this  
23 Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.

24           (91) "Net addition of gross square feet of non-residential space." Gross floor area as defined  
25 in Section 102.9 of this Code to be occupied by, or primarily serving, any non-residential use, less the

1 gross floor area in any structure demolished or rehabilitated as part of the proposed development  
2 project space used primarily and continuously for the same non-residential use within the same  
3 economic activity category. This space shall be accessory to any use other than that same non-  
4 residential use for five years prior to Commission approval of a development project subject to this  
5 Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.

6 (92) "Net addition of gross square feet of residential space." Gross floor area as defined in  
7 Section 102.9 of this Code to be occupied by, or primarily serving, residential use, less the gross floor  
8 area in any structure demolished or rehabilitated as part of the proposed residential development  
9 project space used primarily and continuously for residential use and not accessory to any use other  
10 than residential use for five years prior to Planning Commission approval of a development project,  
11 subject to this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.

12 (93) "Net addition of gross square feet of office space." Gross floor area as defined in  
13 Planning Code Section 102.9 to be occupied by, or primarily serving, office use, less the gross floor  
14 area in any structure demolished or rehabilitated as part of the proposed office development project  
15 space used primarily and continuously for office or hotel use and not accessory to any use other than  
16 office or hotel use for five years prior to Planning Commission approval of an office development  
17 project subject to this Article, or for the life of the structure demolished or rehabilitated, whichever is  
18 shorter.

19 (94) Net addition of gross square feet of research and development space." Gross floor area  
20 as defined in Section 102.9 of this Code to be occupied by, or primarily serving, research and  
21 development use, less the gross floor area in any structure demolished or rehabilitated as part of the  
22 proposed research and development project that was used primarily and continuously for  
23 entertainment, hotel, office, research and development, or retail use and was not accessory to any use  
24 other than entertainment, hotel, office, research and development, or retail use, for five years prior to  
25

1 Commission approval of a research and development project subject to this Article, or for the life of the  
2 structure demolished or rehabilitated, whichever is shorter.

3 (95) "Net addition of gross square feet of retail space." Gross floor area as defined in Section  
4 102.9 of this Code to be occupied by, or primarily serving, retail use, less the gross floor area in any  
5 structure demolished or rehabilitated as part of the proposed retail development project that was used  
6 primarily and continuously for entertainment, hotel, office, research and development, or retail use and  
7 was not accessory to any use other than entertainment, hotel, office, research and development, or  
8 retail use, for five years prior to Planning Commission approval of a retail development project subject  
9 to this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.

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

17 (97) "Nonprofit child-care provider." A child-care provider that is an organization organized  
18 and operated for nonprofit purposes within the provisions of California Revenue and Taxation Code  
19 Sections 23701--23710, inclusive, as demonstrated by a written determination from the California  
20 Franchise Tax Board exempting the organization from taxes under Revenue and Taxation Code Section  
21 23701.

22 (98) "Nonprofit organization." An organization organized and operated for nonprofit  
23 purposes within the provisions of California Revenue and Taxation Code Sections 23701--23710,  
24 inclusive, as demonstrated by a written determination from the California Franchise Tax Board  
25 exempting the organization from taxes under Revenue and Taxation Code Section 23701.

1           (99) "Non-Residential development project." Any new construction, addition, extension,  
2 conversion or enlargement, or combination thereof, of an existing structure that includes any occupied  
3 floor area of a non-residential use; provided, however, that for projects that solely comprise an  
4 addition to an existing structure that would add occupied floor area in an amount less than 20 percent  
5 of the occupied floor area of the existing structure, the provisions of this Article shall only apply to the  
6 new occupied square footage.

7           (100) "Non-Residential space subject to the Balboa Park Impact Fee." Each net addition of  
8 gross square feet within the Project Area that contributes to a 20 percent increase in commercial  
9 capacity of an existing structure.

10           (101) "Non-residential Space Subject to the Eastern Neighborhoods Infrastructure Impact  
11 Fee. Each net addition of net square feet within the Eastern Neighborhoods Project Area which  
12 contributes to a 20 percent increase in non-residential capacity of an existing structure.

13           (102) Non-residential use." Any structure or portion thereof intended for occupancy by retail,  
14 office, commercial, or other non-residential uses defined in Section 209.3, 209.8, 217, 218, 219 of this  
15 Code, and 221; except that residential components of uses defined in Section 209.3(a)-(c) and (g)-(i)  
16 shall be defined as a "residential use" for purposes of this Article. For the purposes of this Article, non-  
17 residential use shall not include PDR and publicly owned and operated community facilities.

18           (103) "Notice of Special Restrictions." A document recorded with the San Francisco  
19 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental  
20 restrictions and any restrictions on purchaser or tenant income levels included as a Condition of  
21 Approval of the principal project relating to the unit.

22           (104) "Office development project." Any new construction, addition, extension, conversion or  
23 enlargement, or combination thereof, of an existing structure which includes any gross floor area of  
24 office use

1           (105) "Office use." Space within a structure or portion thereof intended or primarily suitable  
2 for occupancy by persons or entities which perform, provide for their own benefit, or provide to others  
3 at that location services including, but not limited to, the following: Professional; banking; insurance;  
4 management; consulting; technical; sales; and design; and the non-accessory office functions of  
5 manufacturing and warehousing businesses; all uses encompassed within the definition of "office" in  
6 Section 219 of this Code; multimedia, software, development, web design, electronic commerce, and  
7 information technology; all uses encompassed within the definition of "administrative services" in  
8 Section 890.106 of this Code; and all "professional services" as proscribed in Section 890.108 of this  
9 Code excepting only those uses which are limited to the Chinatown Mixed Use District.

10           (106) "Off-site unit." A unit affordable to qualifying households constructed pursuant to this  
11 Ordinance on a site other than the site of the principal project.

12           (107) "On-site unit." A unit affordable to qualifying households constructed pursuant to this  
13 Article on the site of the principal project.

14           (108) "Owned unit." A unit affordable to qualifying households which is a condominium, stock  
15 cooperative, community apartment, or detached single-family home. The owner or owners of an owned  
16 unit must occupy the unit as their primary residence.

17           (109) "Owner." The record owner of the fee or a vendee in possession.

18           (110) "PDR use." Those uses contained in Sections 220, 222, 223, 224, 225, and 226 of this  
19 Code.

20           (111) "Principal project." A housing development on which a requirement to provide  
21 affordable housing units is imposed.

22           (112) "Principal site." The total site proposed for development, including the portion of site  
23 proposed to be legally transferred to the City and County of San Francisco.

24           (113) "Procedures Manual." The City and County of San Francisco Affordable Housing  
25 Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as amended.

1           (114) "Rent" or "rental." The total charges for rent, utilities, and related housing services to  
2 each household occupying an affordable unit.

3           (115) "Rental unit." A unit affordable to qualifying households which is not a condominium,  
4 stock cooperative, or community apartment.

5           (116) "Replacement." The total amount of gross floor area, as defined in Section 102.9 of this  
6 Code, to be demolished and reconstructed by a development project, provided that the space  
7 demolished had been occupied by, or primarily serving, any residential, non-residential, or PDR use  
8 for five years prior to Planning Commission or Planning Department approval of the development  
9 project subject to this Article or for the life of the structure demolished or retained, whichever is  
10 shorter.

11           (117) "Research and Development ("R&D") project." Any new construction, addition,  
12 extension, conversion, or enlargement, or combination thereof, of an existing structure which includes  
13 any gross square feet of R&D use.

14           (118) "Research and development use." Space within any structure or portion thereof intended  
15 or primarily suitable for basic and applied research or systematic use of research knowledge for the  
16 production of materials, devices, systems, information or methods, including design, development and  
17 improvement of products and processing, including biotechnology, which involves the integration of  
18 natural and engineering sciences and advanced biological techniques using organisms, cells, and parts  
19 thereof for products and services, excluding laboratories which are defined as light manufacturing uses  
20 consistent with Section 226 of this Code.

21           (119) "Residential Space Subject to the Balboa Park Impact Fee." Each net addition of gross  
22 square feet within the Balboa Park Project Area which results in a net new residential unit.

23           (120) "Residential Space Subject to the Eastern Neighborhoods Infrastructure Impact Fee."  
24 Each net addition of net square feet within the Eastern Neighborhoods Project Area which results in a  
25 net new residential unit.

1           (121) "Residential Space Subject to the Market and Octavia Community Infrastructure Impact  
2 Fee." Each net addition of occupiable square feet within the Market and Octavia Program Area which  
3 results in an additional residential unit or contributes to a 20 percent increase of residential space  
4 from the time that this ordinance is adopted within the Market and Octavia Community Improvements  
5 Fund.

6           (122) "Residential use." Any structure or portion thereof intended for occupancy by uses  
7 defined in Sections 209.1, 790.88, and 890.88 of this Code, as relevant for the subject zoning district,  
8 or containing group housing as defined in Section 209.2(a)-(c) of this Code and any residential  
9 components of institutional uses as defined in Section 209.3(a)-(c) and (g)-(i) of this Code.

10           (123) "Retail development project." Any new construction, addition, extension, conversion, or  
11 enlargement, or combination thereof, of an existing structure which includes any gross square feet of  
12 retail use.

13           (124) "Retail/entertainment." An economic activity category under the TIDF that includes, but  
14 is not limited to, a retail use; an entertainment use; massage establishments, as defined in Section  
15 218.1 of this Code; laundering, and cleaning and pressing, as defined in Section 220 of this Code.

16           (125) "Retail use." Space within any structure or portion thereof intended or primarily  
17 suitable for occupancy by persons or entities which supply commodities to customers on the premises  
18 including, but not limited to, stores, shops, restaurants, bars, eating and drinking businesses, and the  
19 uses defined in Sections 218 and 220 through 225 of this Code, and also including all space accessory  
20 to such retail use.

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

23           (127) "Rincon Hill Community Improvements Fund." The fund into which all fee revenue  
24 collected by the City from the Rincon Hill Community Infrastructure Impact Fee is deposited.



1           (128) "Rincon Hill Community Infrastructure Impact Fee." The fee collected by the City to  
2 mitigate impacts of new development in the Rincon Hill Program Area, as described in the findings in  
3 Section 418.1.

4           (129) "Rincon Hill Program Area." Those districts identified as the Rincon Hill Downtown  
5 Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

6           (130) "Section 6932." Section 6932 of Title 25 of the California Code of Regulations as such  
7 section applies to the County of San Francisco.

8           (75) "SOMA." The area bounded by Market Street to the north, Embarcadero to the east,  
9 King Street to the south, and South Van Ness and Division to the west.

10           (131) "SOMA Community Stabilization Fee." The fee collected by the City to mitigate impacts  
11 on the residents and businesses of SOMA of new development in the Rincon Hill Program Area, as  
12 described in the findings in Section 418.1.

13           (132) "SOMA Community Stabilization Fund." The fund into which all fee revenue collected  
14 by the City from the SOMA Community Stabilization Fee is deposited.

15           (133) "Sponsor" or "project sponsor." An applicant seeking approval for construction of a  
16 development project subject to this Article, such applicant's successor and assigns, and/or any entity  
17 which controls or is under common control with such applicant.

18           (134) "Stock cooperative." As defined in California Business and Professions Code Section  
19 11003.2.

20           (135) "Student housing." A building where 100 percent of the residential uses are affiliated  
21 with and operated by an accredited post-secondary educational institution. Typically, student housing  
22 is for rent, not for sale. This housing shall provide lodging or both meals and lodging, by  
23 prearrangement for one week or more at a time. This definition only applies in the Eastern  
24 Neighborhoods Mixed Use Districts.

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

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

8           (138) "Transit Impact Development Fee; TIDF." The development fee that is the subject of  
9 Sectoin 411.1 et seq. of this Article.

10          (139) "Treasurer." The Treasurer for the City and County of San Francisco.

11          (140) "Trip generation rate." The total number of automobile and Municipal Railway trips  
12 generated for each 1,000 square feet of development in a particular economic activity category as  
13 established in the TIDF Study, or pursuant to the five-year review process established in Section 411.5  
14 of this Article.

15          (141) "Use." The purpose for which land or a structure, or both, are legally designed,  
16 constructed, arranged, or intended, or for which they are legally occupied or maintained, let or leased.

17          (142) "Visitacion Valley." The area bounded by Carter Street and McLaren Park to the west,  
18 Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard to the  
19 northeast, Bayview Park to the north, Candlestick Park and Candlestick Point Recreation Area to the  
20 east, the San Francisco Bay to the southeast, and the San Francisco County line to the south.

21          (143) "Visitor services." An economic activity category under the TIDF that includes, but is  
22 not limited to, hotel use; motel use, as defined in Section 216(c) and (d); and time-share projects, as  
23 defined in Section 11003.5(a) of the California Business and Professions Code.

1           (144) "Waiver Agreement." An agreement acceptable in form and substance to the City  
2 Attorney and the Planning Department under which the City agrees to waive all or a portion of the  
3 Community Improvements Impact Fee.

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

5           (a) Collection by the Development Fee Collection Unit. All development impact and in-lieu  
6 fees authorized by this Code shall be collected by the Development Fee Collection Unit at DBI in  
7 accordance with Section 107A.13 of the San Francisco Building Code.

8           (b) Required City Agency or Department Notice to Development Fee Collection Unit Prior  
9 to Issuance of Building or Site Permit; Request to Record Notice of Fee.

10          (1) Required Notice. When the Planning Department determines that a development project  
11 is subject to one or more development fees or development impact requirements, but in any case no  
12 later than prior to issuance of the building or site permit for a development project, the Department  
13 shall send written or electronic notification to the Development Fee Collection Unit at DBI, and also to  
14 MOH, MTA or other applicable agency that administers an applicable development fee or development  
15 impact requirement, that: (i) identifies the development project, (ii) lists which specific development fees  
16 and/or development impact requirements are applicable and the legal authorization for their  
17 application, (iii) specifies the dollar amount of the development fee or fees that the Department  
18 calculates is owed to the City or that the project sponsor has elected to satisfy a development impact  
19 requirement through the provision of physical or "in-kind" improvements, and (iv) lists the name and  
20 contact information for the staff person at each agency or department responsible for calculating the  
21 development fee or monitoring compliance with the development impact requirement for physical or in-  
22 kind improvements.

23          (2) Amended Notices. The Department shall send an amended notice to the Development  
24 Fee Collection Unit, and also to any department or agency that received the initial notice, if at any time  
25 subsequent to its initial notice: (i) any of the information required by subsection (1) above is changed

1 or modified, or (ii) the development project is modified by the Department or Commission during its  
2 review of the project and the modifications change the dollar amount of the development fee or the  
3 scope of any development impact requirement.

4 (3) Optional Recordation of Notice of Special Restrictions Prior to Issuance of Building or  
5 Site Permit. Prior to issuance of a building or site permit for a development project subject to a  
6 development fee or development impact requirement, the Department may request the Development Fee  
7 Collection Unit to record a notice with the County Recorder that a development project is subject to a  
8 development fee or development impact requirement. The County Recorder shall serve or mail a copy  
9 of such notice to the persons liable for payment of the fee or satisfaction of the requirement and the  
10 owners of the real property described in the notice. The notice shall include (i) a description of the real  
11 property subject to the development fee or development impact requirement, (ii) a statement that the  
12 development project is subject to the imposition of the development fee or development impact  
13 requirement, and (iii) a statement that the dollar amount of the fee or the specific development impact  
14 requirement to which the project is subject has been determined under Article 4 of this Code and citing  
15 the applicable section number.

16 (c) Process for Revisions of Determination of Development Impact Fee(s) or Development  
17 Impact Requirement(s). In the event that the Department or the Commission takes action affecting any  
18 development project subject to this Article and such action is subsequently modified, superseded,  
19 vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the building  
20 permit or building permit application for such development project shall be remanded to the  
21 Department to determine whether the development project has been changed in a manner which affects  
22 the calculation of the amount of development fees or development impact requirements required under  
23 this Article and, if so, the Department shall revise the requirement imposed on the permit application in  
24 compliance with this Article within 30 days of such remand and notify the project sponsor in writing of  
25 such revision or that a revision is not required. The Department shall notify the Development Fee

1 Collection Unit at DBI if the revision materially affects the development fee requirements originally  
2 imposed under this Article so that the Development Fee Collection Unit update the Project  
3 Development Fee Report and re-issue the associated building or site permit for the project, if  
4 necessary, to ensure that any revised development fees or development impact requirements are  
5 enforced.

6 SEC. 403. PAYMENT OF DEVELOPMENT FEE(S) OR SATISFACTION OF DEVELOPMENT  
7 IMPACT REQUIREMENT(S) AS A CONDITION OF APPROVAL FOR ISSUANCE OF BUILDING  
8 OR SITE PERMIT. In addition to any other condition of approval that may otherwise be applicable, the  
9 Department or Commission shall require as a condition of approval of any building or site permit for a  
10 development project subject to a development fee or development impact requirement under this Article  
11 that such development fee or fees be paid prior to the issuance of the first construction document for  
12 the development project with an option for the project sponsor to defer payment to prior to issuance of  
13 the first certificate of occupancy upon agreeing to pay a Development Fee Deferral Surcharge on the  
14 amount owed, as provided by Section 107A.13.3 of the San Francisco Building Code. The Department  
15 or Commission shall also require as a condition of approval that any development impact requirement  
16 imposed on a development project under this Article shall be satisfied prior to issuance of the first  
17 certificate of occupancy for the development project, irrespective of whether the sponsor has elected to  
18 defer payment of any development fee or fees to prior to issuance of the first certificate of occupancy.

19 The option to defer payment of a development fee shall not be available to a project sponsor  
20 who paid the fee prior to the operative date of May 15, 2010. The deferral option shall expire three  
21 years from May 15, 2010 unless the Board of Supervisors extends it. Prior to the May 15, 2010  
22 expiration date, the Planning Commission shall hold a public hearing to determine whether continuing  
23 the option to defer the payment of development fees is warranted due to difficult economic times, and  
24 shall forward its recommendation to the Board. If the original May 15, 2010 expiration date is  
25 extended, further extensions shall be considered on an annual basis following the process described in

1 this paragraph. Any project sponsor who has elected to defer payment of a development fee prior to the  
2 deferral program's expiration date may continue in the program.

3 SEC. 404. PROJECT DEVELOPMENT FEE REPORT; RESOLUTION OF DEVELOPMENT  
4 FEE DISPUTE; APPEAL TO BOARD OF APPEALS; PUBLIC NOTICE.

5 (a) Project Development Fee Report. Under Section 107A.13.7 of the San Francisco  
6 Building Code, prior to issuance of the building or site permit for a development project subject to any  
7 development fees or development impact requirements, the Development Fee Collection Unit at DBI  
8 shall prepare and provide to the project sponsor, or any member of the public upon request, a Project  
9 Development Fee Report that (i) identifies the development project, (ii) lists the specific development  
10 fees or development impact requirements that are applicable, (iii) lists the dollar amount of any  
11 development fees or the scope of any development impact requirement, (iii) states when the  
12 development fees are due and payable and the status of payment, and (iv) provides any other relevant  
13 information concerning the development fees or development impact requirements.

14 (b) Resolution of Development Fee or Development Impact Requirement Dispute; Appeal to  
15 Board of Appeals. If a dispute or question arises concerning the accuracy of the final Project  
16 Development Fee Report, including the calculation of any development fee listed thereon, the dispute  
17 shall be resolved or appealed to the Board of Appeals in accordance with Section 107A.13.9 of the San  
18 Francisco Building Code. The jurisdiction of the Board shall be strictly limited to determining the  
19 accuracy of the Report and the mathematical calculation of the development fee or scope of the  
20 physical or "in-kind" requirement. The Board has no jurisdiction to: (i) review the scope or amount of  
21 the development fee or requirement established by the Code, (ii) reduce, adjust, or waive a  
22 development fee or requirement on the ground that there is no reasonable relationship or nexus  
23 between the impact of development and either the amount of the fee charged or the physical  
24 requirement, (iii) reduce or waive the development fee or requirement based on housing affordability.

1 duplication of fees, or any other issue related to fairness or equity, or (iv) review the nexus studies that  
2 support the development fee or requirement and the City's legal authority to impose it.

3 (c) Public Notice of the Project Development Fee Report. Any public notice issued by the  
4 Department of an approval action on a development project that is subject to a development fee or a  
5 development requirement under this Article shall notify the public of a right to request a copy of the  
6 Project Development Fee Report from the Development Fee Collection Unit at DBI. In addition to this  
7 notice, DBI shall provide final notice of the availability of the Project Development Fee Report as part  
8 of its standard notice of the issuance of a building or site permit for any project and of the right to  
9 appeal the accuracy of the Project Development Fee Report to the Board of Appeals as part of the  
10 underlying building or site permit in accordance with Section 107A.13.9 of the San Francisco Building  
11 Code.

12 SEC. 405. DEVELOPMENT FEE REFUND WHEN BUILDING PERMIT IS CANCELLED OR  
13 EXPIRES PRIOR TO COMPLETION OF WORK AND COMMENCEMENT OF OCCUPANCY. If a  
14 project sponsor cancels or withdraws a building or site permit prior to completion of work and  
15 commencement of occupancy of a development project, or a building or site permit expires prior to  
16 completion of work and commencement of occupancy so that it will be necessary to obtain a new permit  
17 to carry out any new work on the development project, any obligation to comply with this Article shall  
18 be cancelled, and any development fee previously paid to the Development Fee Collection Unit at DBI  
19 shall be refunded to the project sponsor. If and when the project sponsor applies for a new building or  
20 site permit, the procedures set forth in this Article shall be followed for the new development project.

21 SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT PROJECT  
22 REQUIREMENTS.

23 (a) Waiver or Reduction Based on Absence of Reasonable Relationship.

24 (1) The sponsor of any development project subject to a development fee or development  
25 impact requirement imposed by this Article may appeal to the Board of Supervisors for a reduction,

1 adjustment, or waiver of the requirement based upon the absence of any reasonable relationship or  
2 nexus between the impact of development and either the amount of the fee charged or the on-site  
3 requirement.

4 (2) Any appeal authorized by this Section shall be made in writing and filed with the Clerk  
5 of the Board no later than 15 days after the date the Department or Commission takes final action on  
6 the project approval that assesses the requirement. The appeal shall set forth in detail the factual and  
7 legal basis for the claim of waiver, reduction, or adjustment.

8 (3) The Board of Supervisors shall consider the appeal at a public hearing within 60 days  
9 after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to  
10 support the appeal, including comparable technical information to support appellant's position. The  
11 decision of the Board shall be by a simple majority vote and shall be final.

12 (4) If a reduction, adjustment, or waiver is granted, any change in use within the project  
13 shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement. If the  
14 Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the  
15 nature and extent of the reduction, adjustment or waiver to the Development Fee Collection Unit at  
16 DBI and the Unit shall modify the Project Development Fee Report to reflect the change.

17 (b) Waiver or Reduction, Based on Housing Affordability or Duplication of Fees.

18 (1) The Planning Commission shall give special consideration to offering reductions or  
19 waivers of the impact fee to housing projects on the grounds of affordability in cases in which the State  
20 of California, the Federal Government, MOH, the San Francisco Redevelopment Agency, or other  
21 public agency subsidies target new housing for households at or below 50% of the Area Median  
22 Income as published by HUD. This waiver clause intends to provide a local 'match' for these deeply  
23 subsidized units and should be considered as such by relevant agencies. Specifically these units may be  
24 rental or ownership opportunities but they must be subsidized in a manner which maintains their  
25 affordability for a term no less than 55 years. Project sponsors must demonstrate to Department staff



1 that a governmental agency will be enforcing the term of affordability and reviewing performance and  
2 service plans as necessary; usually this takes the form of a deed restriction.

3 (2) The Planning Department shall publish an annual schedule of specific values for  
4 waivers and reductions available under this subsection. Department staff shall apply these waivers  
5 based on the most recent schedule published at the time that fee payment is made.

6 (3) Projects that meet the requirements of this subsection are eligible for a 100 percent fee  
7 reduction until an alternative fee schedule is published by the Department. Ideally some contribution  
8 will be made to Community Improvement Programs for specific areas, as these units will place an  
9 equal demand on community improvements infrastructure. This waiver clause shall not be applied to  
10 units built as part of a developer's efforts to meet the requirements of the Inclusionary Affordable  
11 Housing Program, and Section 415 of this Code.

12 (4) The City shall make every effort not to assess duplicative fees on new development. In  
13 general, project sponsors are only eligible for fee waivers under this Subsection if a contribution to  
14 another fee program would result in a duplication of charges for a particular type of community  
15 infrastructure. The Department shall publish a schedule annually of all known opportunities for  
16 waivers and reductions under this clause, including the specific rate. Requirements under Section 135  
17 and 138 of this Code do not qualify for a waiver or reduction. Should future fees pose a duplicative  
18 charge, such as a Citywide open space or childcare fee, the same methodology shall apply and the  
19 Department shall update the schedule of waivers or reductions accordingly.

20 SEC. 407. NOTICE; FAILURE TO GIVE NOTICE. Any notice required by this Article to be  
21 given to a project sponsor or owner shall be sufficiently given or served upon the sponsor or owner for  
22 all purposes hereunder if: (a) personally served upon the sponsor or owner, or (b) deposited, postage  
23 prepaid, in a post office letterbox addressed in the name of the sponsor or owner at the official address  
24 of the sponsor or owner maintained by the Tax Collector for the mailing of tax bills, or if no such  
25 address is available, to the sponsor at the address of the development project, and (3) to the applicant

1 for the site or building permit at the address on the permit application. Any failure of the Department  
2 or the City to give any notice required under this Article shall not relieve the project sponsor of its  
3 obligations under this Article.

4 SEC. 408. LIEN PROCEEDINGS. If DBI inadvertently or mistakenly issues the first  
5 construction document or first certificate of occupancy, whichever applies, prior to the project sponsor  
6 paying all development fees due and owing, or prior to the sponsor satisfying any development impact  
7 requirement, DBI shall institute lien proceedings to recover the development fee or fees, plus interest  
8 and any Development Fee Deferral Surcharge, under Section 107A.13.15 of the San Francisco  
9 Building Code.

10 SEC. 409. ANNUAL CITYWIDE DEVELOPMENT FEE REPORTING REQUIREMENTS.

11 (a) Annual Citywide Development Fee and Development Impact Requirements Report. In  
12 coordination with the Development Fee Collection Unit at DBI, the Controller shall issue a report  
13 within 180 days of the end of each fiscal year, that provides information on all development fees  
14 collected during the prior calendar year organized by development fee account and all cumulative  
15 monies collected over the life of each development fee account, as well as all monies expended. The  
16 report shall also provide information on the number of projects that elected to satisfy development  
17 impact requirements through the provision of “in-kind” physical improvements, including on-site and  
18 off-site BMR units, instead of paying development fees. The report shall also include any annual  
19 reporting information otherwise required pursuant to the California Mitigation Fee Act, Government  
20 Code 66001 et seq. The report shall be presented to the Planning Commission and to the Land Use &  
21 Economic Development Committee of the Board of Supervisors. The Report shall also contain  
22 recommendations for annual construction cost inflation adjustments to development fees, described in  
23 subsection (b) below.

24 (b) Annual Development Fee Infrastructure Construction Cost Inflation Adjustments. In  
25 conjunction with the Annual Citywide Development Fee and Development Impact Requirements Report

1 referenced in subsection (a) above, the Controller shall review the amount of each development fee  
2 established in this Article and shall adjust the dollar amount of any development fee on an annual basis  
3 based on the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the  
4 City Administrator's Capital Planning Group and approved by the City's Capital Planning Committee.  
5 The Annual Infrastructure Construction Cost Inflation Estimate shall be updated by the Capital  
6 Planning Group on an annual basis, in consultation with the Capital Planning Committee, with the  
7 goal of establishing a reasonable estimate of construction cost inflation for the next calendar year for a  
8 mix of public infrastructure and facilities in San Francisco. The Capital Planning Group may rely on  
9 past construction cost inflation data, market trends and a variety of national, state and local  
10 commercial and institutional construction cost inflation indices in developing their annual estimates for  
11 San Francisco. The Planning Department and the Development Fee Collection Unit at DBI shall  
12 provide notice of any development fee adjustments, including the formula used to calculate the  
13 adjustment, on its website and to any interested party who has requested such notice at least 30 days  
14 prior to the adjustment taking effect.

15 SEC. 410. COMPREHENSIVE FIVE-YEAR EVALUATION OF ALL DEVELOPMENT FEES  
16 AND DEVELOPMENT IMPACT REQUIREMENTS. Commencing on July 1, 2011, and every five  
17 fiscal years thereafter in conjunction with the Annual Citywide Development Fee and Development  
18 Impact Requirements Report described in Section 409, above, the Director and the Controller shall  
19 jointly prepare and publish a comprehensive report on the status of compliance with this Article,  
20 compliance of any development fees in this Article with the California Mitigation Fee Act, Government  
21 Code section 66001 et seq., including making specific findings regarding any unexpended funds, the  
22 efficacy of existing development fees and development impact requirements in mitigating the impacts of  
23 development projects, and the economic impacts of existing development fees and development impact  
24 requirements on the financial feasibility of projects and housing affordability in particular. In such  
25 report, the Director and Controller may recommend any changes in the formulae or requirements or

1 enforcement of any area-specific or Citywide development fee or development impact requirement in  
2 this Code, prepare additional economic impact studies on such changes or recommend that additional  
3 nexus studies or financial feasibility analyses be done, to improve the efficacy of such fees or  
4 requirements in mitigating development impacts or to reduce any unintended deleterious economic or  
5 social effects associated with such fees or requirements. In making their joint report and  
6 recommendations, the Director and the Controller shall consult with the Directors of OEWD, MOH,  
7 the MTA, or other agency whose fees are affected and shall coordinate the report required by this  
8 Section with any other development fee evaluations and reports that this Article requires to be  
9 performed. The Director and the Controller shall present the Report to the Commission at a public  
10 hearing and to the Land Use & Economic Development Committee of the Board of Supervisors at a  
11 separate public hearing.

12 SEC. 411(formerly Chapter 38 of the San Francisco Administrative Code . TRANSIT IMPACT  
13 DEVELOPMENT FEE. Sections 411.1 through 411.8, hereafter referred to as Section 411.1 et seq.,  
14 set forth the requirements and procedures for the TIDF. The effective date of these requirements shall  
15 be the date the requirements were originally effective or were subsequently modified, whichever  
16 applies.

17 SEC. 411.1. ~~38.2.~~ FINDINGS.

18 A. In 1981, the City enacted an ordinance imposing a Transit Impact Development  
19 Fee ("~~TIDF~~") on new office development in the Downtown area of San Francisco. ~~The~~  
20 ~~ordinance established a rate of \$5.00 for each square foot of new office development.~~ The TIDF was  
21 based on studies showing that the development of new office uses places a burden on the  
22 Municipal Railway, especially in the downtown area of San Francisco during commute hours,  
23 known as "peak periods." The TIDF was based on two cost analyses: one by the Finance  
24 Bureau of the City's former Public Utilities Commission, performed in 1981, and one by the  
25 accounting firm of Touche-Ross, performed in March 1983 to defend a legal challenge to the

1 TIDF. *The studies showed that the cost per square foot of new office development to provide public*  
2 *transit service was \$9.18 and \$8.36, respectively. The California Court of Appeal upheld the TIDF*  
3 *ordinance against legal challenges in Russ Bldg. Partnership v. City and County of San Francisco,*  
4 *199 Cal.App.3d 1496 (1987), reprinted as directed by the California Supreme Court in Russ Bldg.*  
5 *Partnership v. City and County of San Francisco, 44 Cal.3d 839, 845-55 (1988). Among other things,*  
6 *the Court of Appeal found that the TIDF was a valid condition of development of real property, and not*  
7 *a special tax requiring voter approval. The Court also upheld the TIDF against equal protection and*  
8 *substantive due process challenges. Additionally, the California Supreme Court upheld the*  
9 *constitutionality of the TIDF as applied to development of new office uses approved before passage of*  
10 *the TIDF ordinance, where the City had conditioned approval of the new development on the*  
11 *developer's payment of a contemplated, but yet unknown, transit mitigation fee.*

12 B. In 2000, the *City's* Planning Department, with assistance from the Municipal  
13 Transportation Agency, commissioned a study of the TIDF. *The Planning Department issued a*  
14 *request for proposals for a consultant to consider various issues involving the TIDF, including: (1)*  
15 *whether the TIDF should be expanded to include types of land uses in addition to offices; (2) whether*  
16 *the TIDF should be expanded geographically beyond the Downtown area; (3) whether fee amounts*  
17 *should vary by geographic or land use categories; (4) what standards should be used for measuring the*  
18 *baseline performance of the Municipal Railway ("MUNI"); and (5) the developer fees that would be*  
19 *necessary to fund public transit to meet the additional demand resulting from new development.*

20 C. In 2001, the *Planning* Department selected Nelson/Nygaard Associates, a nationally  
21 recognized transportation consulting firm, to perform the study. Later in 2001, Nelson/Nygaard  
22 issued its final report ("TIDF Study"). Before issuing the TIDF Study, Nelson/Nygaard  
23 prepared several Technical Memoranda, which provided detailed analyses of the  
24 methodology and assumptions used in the TIDF Study.

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

9            ~~E. — The TIDF Study also determined that the need to expand MUNI services to  
10 accommodate new development extends to all times of the day, not just peak periods, and therefore  
11 recommended that any measure of the existing level of service and additional service required by new  
12 development include service at all times of the day.~~

13            ~~F. — The former TIDF Ordinance applied the fee to developments in the traditional  
14 "Downtown" area of the City. The TIDF Study noted that since 1981, however, development has  
15 expanded out of the Downtown area of the City, and that such development has required MUNI to build  
16 transit infrastructure in areas outside of the boundary defined in the former TIDF Ordinance.~~

17            ~~G. — To meet the increased demand for public transit projected by the TIDF Study, MUNI  
18 must build new infrastructure and add or adjust service. For example, MUNI's 2002 publication, "A  
19 Vision for Rapid Transit in San Francisco" ("Vision Plan"), proposes transit projects along 12 major  
20 corridors in San Francisco, covering all areas of the City.~~

21            ~~H. — Even where employees and others drawn to new development use private transportation,  
22 their trips will increase the cost of maintaining MUNI's existing service level ("base service standard")  
23 because increasing traffic congestion will result in slower travel speeds for MUNI and require MUNI  
24 to add more service hours to maintain its base service standard. Accordingly, new development will  
25~~

1 ~~require MUNI to add service hours to maintain schedules and reliability that extends beyond the new~~  
2 ~~riders seeking to use MUNI service.~~

3 ~~I. — New development will directly and indirectly require MUNI to (a) maintain and expand~~  
4 ~~service capacity through adding revenue service hours; (b) purchase, maintain and repair rolling~~  
5 ~~stock; (c) install new lines; and (d) add service to existing lines.~~

6 D.J. The TIDF Study further recommended that the City enact an ordinance to impose  
7 transit impact fees that would allow MUNI to maintain its base service standard as new  
8 development occurs throughout the City. The proposed ordinance would require sponsors of  
9 new development in the City to pay a fee that is reasonably related to the financial burden  
10 imposed on MUNI by the new development. This financial burden is measured by the cost  
11 that will be incurred by MUNI to provide increased service to maintain the applicable base  
12 service standard over the life of such new development.

13 ~~K. — The TIDF Study expressed the base service standard as a ratio in which the numerator~~  
14 ~~is the number of hours that MUNI provides service to the public on its entire fleet of vehicles ("revenue~~  
15 ~~service hours"), and the denominator is the number of trips generated by all non-residential land uses.~~  
16 ~~An increase in trips resulting from new non-residential development will reduce the ratio of revenue~~  
17 ~~service hours to overall trips generated by new development. To maintain the base service standard to~~  
18 ~~accommodate the new development, MUNI must increase revenue service hours.~~

19 ~~L. — The TIDF Study developed a daily trip generation rate for each of six economic activity~~  
20 ~~categories developed in the "Citywide Land Use Study," prepared for the Planning Department in~~  
21 ~~1998. The daily trip generation rate included automobile and public transit trips, but excluded non-~~  
22 ~~motorized trips because such trips do not materially affect traffic congestion. The TIDF Study~~  
23 ~~determined that the trip generation rates in each economic activity category do not vary geographically~~  
24 ~~within the City. Therefore, the TIDF Study concluded that developer fee rates should not vary in~~

1 *different districts within the City. The trip generation rates contained in the TIDE Study represent the*  
2 *most reasonable rates available for the economic activity categories in the Study.*

3 *M. — Using data obtained from MUNI and the fiscal year 2000 National Transit Database,*  
4 *the TIDE Study calculated the base service standard fee rates for each of the six economic activity*  
5 *categories in the following way:*

6 *(1) — To calculate MUNI's total annual costs, the TIDE Study combined MUNI's fiscal year*  
7 *2000 operating costs with an average annual capital budget, estimated by averaging the prior five*  
8 *years of MUNI's capital expenditures.*

<i>FY 2000 Operating Costs</i>	<i>\$384,113,000</i>
<i>Average Annual Capital Costs</i>	<i>\$310,000,000</i>
<i>Total Annual Costs</i>	<i>\$694,113,000</i>

14 *(2) — The Study calculated MUNI's net annual costs for fiscal year 2000 by subtracting fare box*  
15 *revenue and federal and state grant funds from MUNI's total costs.*

<i>Total Annual Costs</i>	<i>\$694,113,000</i>
<i>FY 2000 Fare Box Revenue</i>	<i>(\$101,310,000)</i>
<i>FY 2000 Federal/State Grant Funds</i>	<i>(\$182,900,000)</i>
<i>Net Annual Costs</i>	<i>\$409,903,000</i>

23 *(3) — The Study then determined MUNI's net annual cost per revenue service hour by dividing*  
24 *MUNI's net annual costs by MUNI's average daily revenue service hours, as reported to the National*  
25 *Transit Database.*



<i>Net Annual Costs</i>	<i>Average Daily Revenue Service Hours</i>	<i>Net Annual Cost Per Revenue Service Hour</i>
<del>\$409,903,000</del>	<del>÷ 8,436</del>	<del>\$48,600</del>

(4) — The TIDF Study estimated the number of daily auto and transit trips within the City (9,035,282) by using trip generation rates and 2000 employment data supplied by the Planning Department. By dividing MUNI's average daily revenue service hours (8,436) by the estimated daily auto and transit trips within the City (9,035,282), the TIDF Study determined that MUNI provided approximately 0.9336 service hours for every 1,000 transit and auto trips. The TIDF Study multiplied the net annual cost per revenue service hour by 0.9336 to determine a net annual cost per trip.

<i>Net Annual Cost Per Revenue Service Hour</i>	<i>Revenue Service Hours Per 1,000 Trips</i>	<i>Net Annual Cost Per Trip</i>
<del>\$48,600</del>	<del>× 0.9336</del>	<del>\$45.37</del>

(5) — The Study multiplied the net annual cost per trip by an adjusted daily trip rate per economic activity category to calculate a net annual cost per gross square foot (gsf) of new development for each economic activity category. The TIDF Study adjusted the daily trip rate to eliminate bicycle and pedestrian trips.

<i>Economic Activity Category</i>	<i>Adjusted Daily Trip Rate</i>	<i>Net Annual Cost</i>	<i>Net Annual Cost per gsf of</i>
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	<i>Per 1,000 gsf</i>	<i>Per Trip</i>	<i>Development</i>
<i>Cultural/Institution/Education</i>	<i>42.3</i>	<i>\$45.37</i>	<i>\$1.92</i>
<i>Management, Information and Professional Services</i>	<i>15.1</i>	<i>\$45.37</i>	<i>\$0.68</i>
<i>Medical and Health Services</i>	<i>23.9</i>	<i>\$45.37</i>	<i>\$1.08</i>
<i>Production/Distribution/Repair</i>	<i>9.6</i>	<i>\$45.37</i>	<i>\$0.44</i>
<i>Retail/Entertainment</i>	<i>166.8</i>	<i>\$45.37</i>	<i>\$7.57</i>
<i>Visitor Services</i>	<i>13.3</i>	<i>\$45.37</i>	<i>\$0.61</i>

(6) — Finally, the Study multiplied the net annual cost per gross square foot of development for each economic activity category by a net present value factor of 20.69 (based on a U.S. transportation industry index inflation rate of 2.05%, earning on an invested funds rate of 6.14%, and a building life span of 45 years) to establish the base service standard rates for each economic activity category that would be necessary to pay for increased transit services for the 45 year useful life of a new development.

<i>Economic Activity Category</i>	<i>Net Present</i>	<i>Net Annual Cost</i>	<i>Base Service</i>
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	<i>Value Factor</i>	<i>per gsf of</i>	<i>Standard Rates</i>
	-	<i>Development</i>	
<i>Cultural/Institution/Education</i>	<del>20.69</del>	<del>\$1.92</del>	<del>\$39.67</del>
<i>Management, Information and Professional Services</i>	<del>20.69</del>	<del>\$0.68</del>	<del>\$14.17</del>
<i>Medical and Health Services</i>	<del>20.69</del>	<del>\$1.08</del>	<del>\$22.40</del>
<i>Production/Distribution/Repair</i>	<del>20.69</del>	<del>\$0.44</del>	<del>\$9.04</del>
<i>Retail/Entertainment</i>	<del>20.69</del>	<del>\$7.57</del>	<del>\$156.61</del>
<i>Visitor Services</i>	<del>20.69</del>	<del>\$0.61</del>	<del>\$12.53</del>

N. ~~In 2004, MUNI updated the base service standard rates established in the TIDF Study with fiscal year 2003 data (the "updated base service standard rates"). To calculate the updated base service standard rates, MUNI modified certain variables in the TIDF Study's formula to reflect current information, as follows.~~

(1) ~~Rather than using an estimated average annual capital budget (the methodology employed in the TIDF Study), MUNI used its actual capital costs for fiscal years 1999-2003, as reported to the fiscal year 2003 National Transit Database, in determining the average annual capital costs.~~

<i>Operating Costs</i>	<i>\$449,283,888</i>
<i>Average Capital Costs</i>	<i>\$192,468,200</i>
<i>Total Costs</i>	<i>\$641,752,088</i>

(2) — *California Government Code Section 65913.8 prohibits including costs for facility maintenance and operations in a fee imposed on a developer for a public capital facility improvement. It is not clear whether this limitation applies to the TIDF. To comply with Government Code Section 65913.8, if applicable, and to achieve a more conservative estimate of the recoverable costs, MUNI deducted its costs for non-vehicle (facility) maintenance and general administration. MUNI could not separate general administration attributable to facility operations, so MUNI deducted 100% of the general administration costs for the entire department. Accordingly, the updated base service standard rates are even more conservative than may be required under Section 65913.8.*

(3) — *MUNI applied its updated assumptions to the TIDF Study's methodology by deducting non-vehicle maintenance and general administration (in addition to farebox revenues and grant funds) from its total costs to calculate its annual net costs:*

<i>Total Annual Costs FY 2003</i>	<i>\$641,752,088</i>
<i>Farebox Revenue FY 2003</i>	<i>(\$97,779,333)</i>
<i>Federal/State Grant Funds FY 2003</i>	<i>(\$89,445,000)</i>
<i>Non-Vehicle Maintenance FY 2003</i>	<i>(\$34,173,560)</i>
<i>General Administration FY 2003</i>	<i>(\$92,197,116)</i>
<i>Net Annual Costs FY 2003</i>	<i>\$328,157,079</i>

(4) — *To determine the net annual cost per revenue service hour, MUNI used the average daily revenue service hours for Fiscal Year 2003 (10,062), as reported to the National Transit Database:*

<i>Net Annual Costs</i>	<i>Average Daily Revenue Service Hours</i>	<i>Net Annual Cost Per Revenue Service Hour</i>
<del>\$328,157,079</del>	<del>÷ 10,062</del>	<del>\$32,614</del>

(5) — MUNI then calculated the net annual cost per trip by multiplying the net annual cost per revenue service hour by the number of revenue service hours per 1,000 trips:

<i>Net Annual Cost Per Revenue Service Hour</i>	<i>Revenue Service Hours Per 1,000 Trips</i>	<i>Net Annual Cost Per Trip</i>
<del>\$32,614</del>	<del>× 1.1136</del>	<del>\$36.32</del>

(6) — MUNI multiplied the net annual cost per trip by the adjusted daily trip rate for each economic activity category to arrive at a net annual cost per gross square foot of new development for each category:

<i>Economic Activity Category</i>	<i>Adjusted Daily Trip Rate Per 1,000 gsf</i>	<i>Net Updated Annual Cost Per Trip</i>	<i>Net Updated Annual Cost per gsf of Development</i>
<i>Cultural/Institution/Education</i>	<del>42.3</del>	<del>\$36.32</del> -	<del>\$1.54</del>
<i>Management, Information and Professional Services</i>	<del>15.1</del>	<del>\$36.32</del> -	<del>\$0.55</del>
<i>Medical and Health Services</i>	<del>23.9</del>	<del>\$36.32</del> -	<del>\$0.87</del>

<i>Production/Distribution/Repair</i>	<i>9.6</i>	<i>\$36.32</i>	<i>\$0.35</i>
<i>Retail/Entertainment</i>	<i>166.8</i>	<i>\$36.32</i>	<i>\$6.06</i>
<i>Visitor Services</i>	<i>13.3</i>	<i>\$36.32</i>	<i>\$0.48</i>

(7) — *MUNI also updated the net present value factor the TIDF Study used to calculate the updated base service standard rates by calculating the lump sum amount needed to fund \$1.00 (in today's dollars) in annual costs over 45 years, increasing at a current inflation rate of 3.50% (the five-year Bay Area Consumer Price Index as calculated by the Association for Bay Area Governments), with the remaining fund balance invested at a current interest rate of 4.93% (the five year average interest rate earned by the City's Treasurer's Department on pooled funds). Both the TIDF Study and MUNI used the interest rate earned by the City's Treasurer for the respective years. But MUNI elected to use the Bay Area Consumer Price Index rather than the U.S. Transportation Index on which the TIDF Study relied because the Bay Area index more accurately reflects the local inflation rate. The use of the different net present value factor yields the following updated base service standard rates:*

<i>Economic Activity Category</i>	<i>Net Annual-Cost per gsf of Development</i>	<i>Net Present Value Factor</i>	<i>Updated Base-Service Standard Rates</i>
<i>Cultural/Institution/Education</i>	<i>\$1.54</i>	<i>33.36</i>	<i>\$51.25</i>
<i>Management, Information and Professional Services</i>	<i>\$0.55</i>	<i>33.36</i>	<i>\$18.30</i>

<del>Medical and Health Services</del>	<del>\$0.87</del>	<del>33.36</del>	<del>\$28.96</del>
<del>Production/Distribution/Repair</del>	<del>\$0.35</del>	<del>33.36</del>	<del>\$11.63</del>
<del>Retail/Entertainment</del>	<del>\$6.06</del>	<del>33.36</del>	<del>\$202.10</del>
<del>Visitor Services</del>	<del>\$0.48</del>	<del>33.36</del>	<del>\$16.11</del>

~~Ø. In setting the TIDF rates, the City considered the updated base service standard rates and input from a variety of stakeholders, including business groups, developers, and civic organizations. The City set the TIDF rates well below the updated base service standard rates to reduce the costs of the TIDF to sponsors of new developments, who are subject to other development fees imposed by the City, and to guarantee that the TIDF does not exceed the reasonable cost to fund the additional transit improvements necessitated by new development. The TIDF rates are as follows:~~

<del>Economic Activity Category</del>	<del>Updated Base Service Standard Rates</del>	<del>TIDF Schedule (from Sec. 38.4)</del>
<del>Cultural/Institution/Education</del>	<del>\$51.25</del>	<del>\$10.00</del>
<del>Management, Information and Professional Services</del>	<del>\$18.30</del>	<del>\$10.00</del>
<del>Medical and Health Services</del>	<del>\$28.96</del>	<del>\$10.00</del>
<del>Production/Distribution/Repair</del>	<del>\$11.63</del>	<del>\$8.00</del>
<del>Retail/Entertainment</del>	<del>\$202.10</del>	<del>\$10.00</del>

<del>Visitor Services</del>	<del>\$16.11</del>	<del>\$8.00</del>
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~~E. P.~~ Based on projected new development over the next 20 years, the TIDF will provide revenue to MUNI that is significantly below the costs that MUNI will incur to mitigate the transit impacts resulting from the new development.

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

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

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

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

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

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

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

~~SEC. 411.2. SEC. 38.1.~~ **DEFINITIONS.** See Section 401 of this Article. ~~For the purposes of this Chapter, the following definitions shall apply:~~



1           A. — ~~Accessory Use. A related minor use which is either necessary to the operation or~~  
2 ~~enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to~~  
3 ~~any such use and is located on the same lot as the principal or conditional use.~~

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

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

15          D. — ~~Board. The Board of Supervisors of the City and County of San Francisco.~~

16          E. — ~~Certificate of Final Completion and Occupancy. A certificate of final completion and~~  
17 ~~occupancy issued by any authorized entity or official of the City, including the Director of the~~  
18 ~~Department of Building Inspection, under the Building Code.~~

19          F. — ~~City or San Francisco. The City and County of San Francisco.~~

20          G. — ~~Covered Use. Any use subject to the TIDF.~~

21          H. — ~~Cultural/Institution/Education (CIE). An economic activity category that includes, but is~~  
22 ~~not limited to, schools, as defined in subsections (g), (h), and (i) of Section 209.3 of the Planning Code~~  
23 ~~and subsections (f)-(i) of Section 217 of the Planning Code; child care facilities, as defined in~~  
24 ~~subsections (e) and (f) of Section 209.3 of the Planning Code and subsection (e) of Section 217 of the~~  
25

1 ~~Planning Code; museums and zoos; and community facilities, as defined in Section 209.4 of the~~  
2 ~~Planning Code and subsections (a)-(c) of Section 221 of the Planning Code.~~

3 ~~I. — Director. The Director of Transportation of the MTA, or his or her designee.~~

4 ~~J. — Economic Activity Category. One of the following six categories of nonresidential uses:~~  
5 ~~Cultural/Institution/Education (CIE), Management, Information and Professional Services (MIPS),~~  
6 ~~Medical and Health Services, Production/Distribution/Repair (PDR), Retail/Entertainment, and Visitor~~  
7 ~~Services.~~

8 ~~K. — Gross Floor Area. The total area of each floor within the building's exterior walls, as~~  
9 ~~defined in Section 102.9 of the San Francisco Planning Code, except that for purposes of determining~~  
10 ~~the applicability of the TIDE, the exclusion from this definition set forth in Section 102.9(b)(12) of that~~  
11 ~~Code shall not apply.~~

12 ~~L. — Gross Square Feet of Use. The total square feet of gross floor area in a building and/or~~  
13 ~~space within or adjacent to a structure devoted to all covered uses, including any common areas~~  
14 ~~exclusively serving such uses and not serving residential uses. Where a structure contains more than~~  
15 ~~one use, areas common to two or more uses, such as lobbies, stairs, elevators, restrooms, and other~~  
16 ~~ancillary space included in gross floor area that are not exclusively assigned to one use shall be~~  
17 ~~apportioned among the two or more uses in accordance with the relative amounts of gross floor area,~~  
18 ~~excluding such space, in the structure or on any floor thereof directly assignable to each use.~~

19 ~~M. — Management, Information and Professional Services (MIPS). An economic activity~~  
20 ~~category that includes, but is not limited to, office use as defined in Section 313.1(35) of the Planning~~  
21 ~~Code; medical offices and clinics, as defined in Section 890.114 of the Planning Code; business~~  
22 ~~services, as defined in Section 890.111 of the Planning Code, Integrated PDR, as defined in Section~~  
23 ~~890.49 of the Planning Code, and Small Enterprise Workspaces, as defined in Section 227(t) of the~~  
24 ~~Planning Code.~~

1           *N. — Medical and Health Services. An economic activity category that includes, but is, not*  
2 *limited to, those non-residential uses defined in Sections 209.3(a) and 217(a) of the Planning Code;*  
3 *animal services, as defined in subsections (a) and (b) of Section 224 of the Planning Code; and social*  
4 *and charitable services, as defined in subsection (d) of Section 209.3 of the Planning Code and*  
5 *subsection (d) of Section 217 of the Planning Code.*

6           *O. — Municipal Railway; MUNI. The public transit system owned by City and under the*  
7 *jurisdiction of the Municipal Transportation Agency.*

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

10          *Q. — Municipal Transportation Agency Board of Directors; MTA Board. The governing*  
11 *board of the MTA.*

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

18          *S. — Office Space Development Fee; OSDF. A fee imposed under Section 38.3-1 of this*  
19 *Chapter.*

20          *T. — Planning Code. The Planning Code of the City and County of San Francisco, as it may*  
21 *be amended from time to time.*

22          *U. — Production/Distribution/Repair (PDR). An economic activity category that includes, but*  
23 *is not limited to, manufacturing and processing, as defined in Section 226 of the Planning Code; those*  
24 *uses listed in Section 222 of the Planning Code; automotive services, as defined in Section 223(a)-(k) of*  
25

1 ~~the Planning Code; arts activities and spaces, as defined in Section 102.2 of this the Planning Code;~~  
2 ~~and research and development, as defined in Section 313.1(42) of the Planning Code.~~

3 ~~V. — Residential. Any type of use containing dwellings as defined in Section 209.1 of this the~~  
4 ~~Planning Code or containing group housing as defined in Section 209.2(a)-(c) of the Planning Code.~~

5 ~~W. — Retail/Entertainment. An economic activity category that includes, but is not limited to,~~  
6 ~~retail use, as defined in Section 218 of the Planning Code; entertainment use, as defined in Section~~  
7 ~~313.1(15) of the Planning Code; massage establishments, as defined in Section 218.1 of the Planning~~  
8 ~~Code; laundering, and cleaning and pressing, as defined in Section 220 of the Planning Code.~~

9 ~~X. — Revenue Service Hours. The number of hours that the Municipal Railway provides~~  
10 ~~service to the public with its entire fleet of buses, light rail (including streetcars), and cable cars.~~

11 ~~Y. — Sponsor. An applicant seeking approval for construction of new development subject to~~  
12 ~~this chapter, such applicant's successors and assigns, and/or any person or entity that controls or is~~  
13 ~~under common control with such applicant.~~

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

18 ~~AA. — Transit Impact Development Fee; TIDF. The development fee that is the subject of this~~  
19 ~~Chapter.~~

20 ~~BB. — Treasurer. Treasurer of the City and County of San Francisco.~~

21 ~~CC. — Trip Generation Rate. The total number of automobile and Municipal Railway trips~~  
22 ~~generated for each 1,000 square feet of development in a particular economic activity category as~~  
23 ~~established in the TIDF Study, or pursuant to the five-year review process established in Section 38.7~~  
24 ~~of this Chapter.~~

1 ~~DD.—Use. The purpose for which land or a structure, or both, are legally designed,~~  
2 ~~constructed, arranged or intended, or for which they are legally occupied or maintained, let or leased.~~

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

7 ~~SEC. 38.3 IMPOSITION OF TRANSIT IMPACT DEVELOPMENT FEE.~~

8 ~~A.—Subject to the exceptions set forth in subsections D and E below, each sponsor of a new~~  
9 ~~development in the City shall pay to the City and deliver to the Treasurer upon issuance of any~~  
10 ~~temporary certificate of occupancy, and as a condition precedent to issuance for such new development~~  
11 ~~of any certificate of final completion and occupancy, whichever occurs first, a TIDF. The TIDF shall be~~  
12 ~~calculated on the basis of the number of gross square feet of new development, multiplied by the square~~  
13 ~~foot rate in effect at the time of payment for each of the applicable economic activity categories within~~  
14 ~~the new development, as provided in Section 38.4 of this Chapter. An accessory use shall be charged at~~  
15 ~~the same rate as the underlying use to which it is accessory. Whenever any new development or series~~  
16 ~~of new developments cumulatively creates more than 3,000 gross square feet of covered use within a~~  
17 ~~structure, the TIDF shall be imposed on every square foot of such covered use (including any portion~~  
18 ~~that was part of prior new development below the 3,000 square foot threshold).~~

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

23 ~~SEC. 411.3. APPLICATION OF TIDF.~~

24 ~~(a) C. Application. Except as provided in Subsections 38.3 (1) (D) and (2) (E) below, the~~  
25 TIDF shall be payable with respect to any new development in the City for which a building or

1 site permit is issued on or after September 4, 2004. In reviewing whether a development project is  
2 subject to the TIDF, the project shall be considered in its entirety. A sponsor shall not seek multiple  
3 applications for building permits to evade paying the TIDF for a single development project.

4 (1) ~~D.~~ The TIDF shall not be payable on new development, or any portion thereof, for  
5 which a TIDF transit impact development fee has been paid, in full or in part, under the prior  
6 TIDF Transit Impact Development Fee Ordinance adopted in 1981 (Ordinance No. 224-81;  
7 former Chapter 38 of ~~this~~ the Administrative Code), except where (A) ~~(1)~~ gross square feet of  
8 use is being added to the building; or (B) ~~(2)~~ the TIDF rate for the new development is in an  
9 economic activity category with a higher fee rate than the rate set for MIPS, as set forth in  
10 Section 411.3(e) ~~38.4~~.

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

12 (A) ~~(1)~~ New development on property owned (including beneficially owned) by the City,  
13 except for that portion of the new development that may be developed by a private sponsor  
14 and not intended to be occupied by the City or other agency or entity exempted under Section  
15 411.1 et seq. ~~this Chapter~~, in which case the TIDF shall apply only to such non-exempted  
16 portion. New development on property owned by a private person or entity and leased to the  
17 City shall be subject to the fee, unless the City is the beneficial owner of such new  
18 development or unless such new development is otherwise exempted under this Section.

19 (B) ~~(2)~~ Any new development in Mission Bay North or South to the extent application of  
20 this Chapter would be inconsistent with the Mission Bay North Redevelopment Plan and  
21 Interagency Cooperation Agreement or the Mission Bay South Redevelopment Plan and  
22 Interagency Cooperation Agreement, as applicable.

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

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

3           (E) (5) New development for which a project sponsor filed an application for  
4 environmental evaluation or ~~an application for~~ a categorical exemption ~~has been filed~~ prior to  
5 April 1, 2004, and for which the City issued a building permit or site permit ~~is issued~~ on or before  
6 September 4, 2008; provided however, that such new development may be subject to the  
7 ~~OSDF under Section 38.3-1 of this Chapter~~ TIDF imposed by Ordinance No. 224-81, as amended  
8 through June 30, 2004; except that the Department and the Development Fee Collection Unit at DBI  
9 shall be responsible for the administration, imposition, review and collection of any such fee consistent  
10 with the administrative procedures set forth in Section 411.1 et seq. The Department shall make the text  
11 of Ordinance No. 224-81, as amended through June 30, 2004, available on the Department's website  
12 and shall provide copies of that ordinance upon request.

13           (F) (6) The following types of new developments:

14           (i) (a) Public facilities/utilities, as defined in Section 209.6 of ~~this the Planning~~ Code;

15           (ii) (b) Open recreation/horticulture, as defined in Section 209.5 of ~~this the Planning~~  
16 Code, including private noncommercial recreation open use, as referred to in Section 221(g)  
17 of ~~this the Planning~~ Code;

18           (iii) (c) Vehicle storage and access, as defined in Section 209.7 of ~~this the Planning~~  
19 Code;

20           (iv) (d) Automotive services, as defined in Section 223(l)-(v) of ~~this the Planning~~ Code,  
21 that are in a new development;

22           (v) (e) ~~Wholesale~~ing~~, storage, distribution, and open air handling~~ of materials and  
23 equipment, as defined in Section 225 of ~~this the Planning~~ Code;

24           (vi) (f) Other Uses, as defined in Section 227(a)-(q) and (s)-(t) of ~~this the Planning~~  
25 Code;

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

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

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

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

14            ~~G. Upon payment of the fee in full to the Treasurer, and upon request of the sponsor, the~~  
15 ~~Treasurer shall issue a certificate that the fee has been paid. The sponsor shall present such~~  
16 ~~certification to DBI before the issuance of the final certificate of occupancy for the new development.~~  
17 ~~DBI shall provide notice in writing to the Treasurer, the Planning Department, and MUNI at least five~~  
18 ~~business days before issuing the final certificate of occupancy for any new development project. DBI~~  
19 ~~may not issue a final certificate of occupancy for any new development until DBI has received notice~~  
20 ~~from the Treasurer that the TIDF has been paid. An exception to this process exists for Integrated PDR~~  
21 ~~projects that are subject to Section 328 of the Planning Code, for which only 50% of the fees must be~~  
22 ~~paid before the issuance of the final certificate of occupancy.~~

23            ~~38.3-1. IMPOSITION OF OFFICE SPACE DEVELOPMENT FEE.~~

24            ~~(a) Definitions. For purposes of this Section, the following definitions apply:~~



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

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

11           ~~(3) Office Use. Any structure or portion thereof intended for occupancy by business entities~~  
12 ~~which will primarily provide clerical, professional or business services of the business entity, or which~~  
13 ~~will primarily provide clerical, professional or business services to other business entities or to the~~  
14 ~~public, at that location.~~

15           ~~(b) Imposition of Fee.~~

16           ~~(1) New development in the Downtown Area that contains 3,000 or more gross square feet of~~  
17 ~~office use for which an application for environmental evaluation or an application for a categorical~~  
18 ~~exemption has been filed prior to April 1, 2004, and for which a building or site permit was issued on~~  
19 ~~or after September 4, 2004, but prior to September 4, 2008, shall be subject to an office space~~  
20 ~~development fee in accordance with this section 410 et seq. The office space development fee for each~~  
21 ~~gross square foot of office use in new development in the Downtown Area shall be \$5 per square foot.~~

22           ~~(2) Any office space development fee due under paragraph (b)(1) shall be due and payable in~~  
23 ~~accordance with the procedures set forth in this chapter governing payment and collection of the~~  
24 ~~TIDF, except that the amount of the fee shall be calculated based upon gross square feet of office use,~~  
25 ~~rather than gross square feet of use.~~

1           ~~(e) Credits. In determining the number of gross square feet of office use to which the office~~  
2 ~~space development fee applies, the director shall provide for the following credits:~~

3           ~~(1) For prior office uses, there shall be credit for the number of gross square feet of office use~~  
4 ~~being eliminated as part of the project.~~

5           ~~(2) For prior uses other than office use, there shall be a credit for the number of gross square~~  
6 ~~feet of non-office use being eliminated multiplied by an adjustment factor to reflect the difference~~  
7 ~~between office building peak-period municipal railway trip generation rates and peak-period municipal~~  
8 ~~railway trip generation rates for other uses. The adjustment factor shall be determined by the director~~  
9 ~~as follows:~~

10           ~~(A) The adjustment factor shall be a fraction, the numerator of which shall be the peak-period~~  
11 ~~municipal railway trip generation rate which the director shall determine, in consultation with the~~  
12 ~~department of city planning applies to the class of prior use being eliminated by the project.~~

13           ~~(B) The denominator of the fraction shall be the peak-period municipal railway trip generation~~  
14 ~~rate for office use used in the most recent calculation of the transit impact development fee schedule~~  
15 ~~approved by the board of supervisors.~~

16           ~~(C) Notwithstanding the foregoing, the adjustment factor shall not exceed one.~~

17           ~~(c) Calculation of TIDF. The TIDF shall be calculated on the basis of the number of square~~  
18 ~~feet of new development, multiplied by the square foot rate in effect at the time of building or site~~  
19 ~~permit issuance for each of the applicable economic activity categories within the new development, as~~  
20 ~~provided in Subsection 411.3(e) below. An accessory use shall be charged at the same rate as the~~  
21 ~~underlying use to which it is accessory. Whenever any new development or series of new developments~~  
22 ~~cumulatively creates more than 3,000 gross square feet of covered use within a structure, the TIDF~~  
23 ~~shall be imposed on every square foot of such covered use (including any portion that was part of prior~~  
24 ~~new development below the 3,000 square foot threshold).~~

1            (d) Credits. SEC. 38.6. CREDITS. In determining the number of gross square feet of  
2 use to which the TIDF applies, the Department Director shall provide a credit for prior uses  
3 eliminated on the site. The credit shall be calculated according to the following formula:

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

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

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

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

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

21            (4) (d) Notwithstanding the foregoing, the adjustment factor shall not exceed one.

22            ~~SEC. 38.4. TRANSIT IMPACT DEVELOPMENT FEE SCHEDULE.~~

23            (e) A. TIDF Schedule.

24            (1) The TIDF Schedule shall be as follows:

Economic Activity Category	TIDF Per Gross Square Foot of Development
Cultural/Institution/Education	\$10.00
Management, Information and Professional Services	\$10.00
Medical and Health Services	\$10.00
Production/Distribution/Repair	\$8.00
Retail/Entertainment	\$10.00
Visitor Services	\$8.00

(2) ~~B.~~ Biennial Adjustment. Biennially, beginning July 1, 2005, the TIDF Schedule shall be adjusted, without further action by the Board of Supervisors, to reflect the average annual change in the San Francisco Bay Area Consumer Price Index (CPI) for "All Urban Consumers" for the prior two years, as reported by the Association of Bay Area Governments, and as determined by the Director of MTA.

SEC. ~~411.4.~~ ~~38.5.~~ SETTING IMPOSITION OF TIDF.

(a) Determination of Requirements. The Department shall determine the applicability of Section 411.1 et seq. to any development project requiring a building or site permit and, if Section 411.1 is applicable, shall impose any TIDF owed as a condition of approval for issuance of the building or site permit for the project. The project sponsor shall supply any information necessary to assist the Department in this determination. The Zoning Administrator may seek the advice and consent of the MTA regarding any interpretations that may affect implementation of this section. Before obtaining the first building or site permit for any new development in the City on or after September 4, 2004, each sponsor shall file with the Director on such form as the Director may develop, a report

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

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

1 shall promptly inform the Development Fee Collection Unit and the MTA Director's determination  
2 shall prevail.

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

8 SEC. ~~411.5.~~ 38.7. REVIEW OF TIDF ~~FEF~~ SCHEDULE.

9 (a) A. Five-Year Review.

10 (1) ~~Commencing five years after the effective date of this ordinance, and e~~Every five years  
11 thereafter, or more often as the MTA Board may deem necessary, the Director of MTA shall  
12 prepare a report for the MTA Board and the Board of Supervisors with recommendations  
13 regarding whether the TIDF for each economic activity category should be increased,  
14 decreased, or remain the same. The Director of MTA shall coordinate this report with the five-year  
15 evaluation by the Director of Planning required by Section 410 of this Article.

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

20 (A) ~~(a)~~ The base service standard;

21 (B) ~~(b)~~ Capital and operating costs;

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

23 (D) ~~(d)~~ Passenger fare revenue;

24 (E) ~~(e)~~ Daily revenue service hours;

25 (F) ~~(f)~~ Cost per revenue service hour;

- 1            ~~(G)~~ ~~(g)~~ Trip generation rates by economic activity category;
- 2            ~~(H)~~ ~~(h)~~ Cost per trip;
- 3            ~~(I)~~ ~~(i)~~ Cost per gross square foot of development by economic activity category;
- 4            ~~(J)~~ ~~(j)~~ Net present value factor;
- 5            ~~(K)~~ ~~(k)~~ Useful life period(s) for new development by economic activity category;
- 6            ~~(L)~~ ~~(l)~~ Estimated annual rate of return on the proceeds of the fee;
- 7            ~~(M)~~ ~~(m)~~ The placement of particular land uses in economic activity categories.

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

12            ~~(3)~~ ~~(2)~~ In the report, the Director of MTA shall ~~(A)~~ ~~(a)~~ identify the base service standard  
13 fee rates per gross square foot in each economic activity category; and ~~(2)~~ ~~(B)~~ propose a fee  
14 for each economic activity category.

15            ~~(4)~~ ~~(3)~~ After receiving this report and making it available for public distribution, the  
16 Board of Supervisors shall conduct a public hearing in which it shall consider the MTA  
17 Director's report, hear testimony from any interested members of the public, and receive such  
18 other evidence as it may deem necessary. At the conclusion of that hearing, the Board shall  
19 make findings regarding whether the revenues projected to be recovered under the proposed  
20 Fee Schedule would be reasonably related to and would not exceed the costs incurred by  
21 MUNI to maintain the applicable base service standard, in light of demands caused by new  
22 development. The Board ~~of Supervisors~~ shall then make any necessary or appropriate  
23 revisions to the TIDF Schedule.

24            ~~(5)~~ ~~(4)~~ The Board shall consider the MTA Director's report in light of the most recent  
25 five-year review of development fees under Section 410 of this Article ~~the Housing Fee (Planning~~

1 *Code § 313.15), Child Care Fee (Planning Code § 314.7) and Inclusionary Housing Fee (Planning*  
2 *Code § 315.8(e)).* MUNI and the Planning Department shall make every effort to coordinate  
3 application of the TIDF with the City's other development developer fees to avoid unnecessarily  
4 encumbering sponsors of new development.

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

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

11 (2) The rates shall be set at an actuarially sound level to ensure that the proceeds,  
12 including such earnings as may be derived from investment of the proceeds and amortization  
13 thereof, do not exceed the capital and operating costs incurred in order to maintain the  
14 applicable base service standard in light of the demands created by new development subject  
15 to the fee over the estimated useful life of such new development. For purposes of this Section  
16 411.1 et seq. Ordinance, the estimated useful life of a new development is 45 years.

17 SEC. 411.6. TIDF FUND. 38.8. USE OF PROCEEDS FROM TRANSIT IMPACT  
18 DEVELOPMENT FEE. Money received from collection of the TIDF, including earnings from  
19 investments of the TIDF, shall be held in trust by the Treasurer of the City and County of San  
20 Francisco under Section 66006 of the Mitigation Fee Act (Cal. Gov. Code § 60000 et seq.)  
21 and shall be distributed according to the fiscal and budgetary provisions of the San Francisco  
22 Charter and the Mitigation Fee Act, subject to the following conditions and limitations. TIDF  
23 funds may be used to increase revenue service hours reasonably necessary to mitigate the  
24 impacts of new non-residential development on public transit and maintain the applicable  
25 base service standard, including, but not limited to: capital costs associated with establishing



1 new transit routes, expanding transit routes, and increasing service on existing transit routes,  
2 including, but not limited to, procurement of related items such as rolling stock, and design  
3 and construction of bus shelters, stations, tracks, and overhead wires; operation and  
4 maintenance of rolling stock associated with new or expanded transit routes or increases in  
5 service on existing routes; capital or operating costs required to add revenue service hours to  
6 existing routes; and related overhead costs. Proceeds from the TIDF may also be used for all  
7 costs required to administer, enforce, or defend Section 411.1 et seq. ~~this ordinance.~~

8 SEC. 411.7. ~~38.9.~~ RULES AND REGULATIONS. The MTA is empowered to adopt such  
9 rules, regulations, and administrative procedures as it deems necessary to implement this  
10 Section 411.1 et seq. ~~Chapter.~~ In the event of a conflict between any MTA rule, regulation or  
11 procedure and this Section 411.1 et seq. ~~ordinance~~, this Section ~~ordinance~~ shall prevail.

12 ~~SEC. 38.10. NONPAYMENT, RECORDATION OF NOTICE OF FEE; AND NOTICE OF~~  
13 ~~DELINQUENCY; ADDITIONAL REQUEST; NOTICE OF ASSESSMENT OF INTEREST, AND~~  
14 ~~INSTITUTION OF LIEN PROCEEDINGS. A.—Upon the Director's determination that a development~~  
15 ~~is subject to this ordinance, he or she may cause the County Recorder to record a notice that such~~  
16 ~~development is subject to the TIDF. The County Recorder shall serve or mail a copy of such notice to~~  
17 ~~the persons liable for payment of the fee and the owners of the real property described in the notice.~~  
18 ~~The notice shall include (1) a description of the real property subject to the fee; (2) a statement that the~~  
19 ~~development is subject to the imposition of the fee; and (3) a statement that the amount of the fee to~~  
20 ~~which the building is subject is determined under Sections 38.4, 38.5 and related provisions of this~~  
21 ~~ordinance.~~

22 ~~B.—When the Director determines that the fee is due, the Director shall notify the Treasurer,~~  
23 ~~who shall send a request for payment to the sponsor.~~

24 ~~C.—Payment of the TIDF imposed by this ordinance is delinquent if (1) in the case of a fee~~  
25 ~~not payable in installments, the fee is not paid within 30 days of request for payment; (2) in the case of~~

1 a fee payable in installments (for a fee determined prior to the effective date of this ordinance or for a  
2 fee for Integrated PDR subject to Sec. 328 of the Planning Code if the fee installment is not paid within  
3 30 days of the date fixed for payment.

4 ~~D. — Where the TIDF is not paid within 30 days of request for payment, and where the TIDF~~  
5 ~~is payable in installments (for a fee determined prior to the effective date of this ordinance or for a fee~~  
6 ~~for Integrated PDR subject to Sec. 328 of the Planning Code) and any installment is not paid within 30~~  
7 ~~days of the date fixed for payment:~~

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

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

19 ~~(3) — Where a notice of TIDF delinquency has been recorded and the delinquent fee is paid or~~  
20 ~~the Treasurer's determination of delinquency is reversed by appeal to the MTA Board or the~~  
21 ~~delinquency is otherwise cured, the Treasurer shall promptly cause the County Recorder to record a~~  
22 ~~notice that the TIDF delinquency has been cured. Said notice shall include: (a) description of the real~~  
23 ~~property affected; (b) the book and page number of the county record wherein the notice of delinquency~~  
24 ~~was recorded; (c) the date the notice of delinquency was recorded; (d) notification that the delinquency~~  
25 ~~reflected on the notice of delinquency was cured and the date of cure; (e) the amount of the entire fee~~

1 as reflected on the final determination; (f) if applicable, the amount of the fee paid to effect the cure;  
2 and (g) if applicable, a statement that the fee was payable in installments and specification of the  
3 delinquency installments cured; (h) if applicable, the amount of the fee paid to effect the cure.

4 (4) — The Treasurer shall serve or mail the notice that the TIDF delinquency has been cured,  
5 referred to in Section 38.10.D(3) of this ordinance, to the persons liable for the fee and to the owners of  
6 the real property described in such notice.

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

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

15 (2) — With respect to both non-installment and installment fees, if the account is not current  
16 within 60 days of the date of mailing the additional request and notice, the Treasurer shall institute  
17 proceedings to record a lien in accordance with Section 38.11 for the entire balance and any accrued  
18 interest against the property upon which the fee is owed.

19 F. — Thirty days after mailing the additional request for payment, the Treasurer may assess  
20 interest as specified in Paragraph 38.10.E(1) above. Sixty days after mailing the additional request for  
21 payment and notice, the Treasurer may institute lien proceedings as specified in Section 38.11.

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

25 **SEC. 38.11. LIEN PROCEEDINGS; NOTICE.**

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

18            *SEC. 38.12. MANNER OF GIVING NOTICES.*

19            *Any notice required to be given under this Chapter ordinance to a sponsor or owner shall be*  
20 *sufficiently given or served upon the sponsor or owner for all purposes under this ordinance if*  
21 *personally served upon the sponsor or owner, or if deposited, postage prepaid, in a post office letter*  
22 *box addressed in the name of the sponsor or owner at the official address of the sponsor or owner*  
23 *maintained by the Tax Collector of the City and County for the mailing of tax bills; or, if no such*  
24 *address is available, to the sponsor at the address of the development project, and to the applicant for*  
25 *the site or building permit at the address on the permit application.*

1 SEC. ~~411.8. 38.13~~. CHARITABLE EXEMPTIONS.

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

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

21 (c) C. If within 10 years from the date of the issuance of the Certificate of Final  
22 Completion and Occupancy, the exempt property or portion thereof loses its exempt status,  
23 then the sponsor shall, within 90 days thereafter, be obligated to pay the TIDF, reduced by an  
24 amount reflecting the duration of the charitable exempt status in relation to the useful life  
25 estimate used in determining the TIDF for that structure. The amount remaining to be paid

1 shall be determined by recalculating the fee using a useful life equal to the useful life used in  
2 the initial calculation minus the number of years during which the exempt status has been in  
3 effect. After the TIDF has been paid, the Agency shall record a release of the notice recorded  
4 under subsection (b) B. above.

5 (d) D. In the event a property owner fails to pay a fee within the 90-day period, a notice  
6 for request of payment shall be served by the Development Fee Collection Unit at DBI Treasurer  
7 under Section 107A.13 of the San Francisco Building Code Section 38.10.B of this Chapter.

8 Thereafter, upon nonpayment, a lien proceeding shall be instituted under Section 38.10.H of  
9 this Chapter Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code.

10 SEC. 412 (formerly Section 139). DOWNTOWN PARK FEE SPECIAL FUND. Sections  
11 412.1 through 412.6, hereafter referred to as Section 412.1 et seq., set forth the requirements and  
12 procedures for the Downtown Park Fee. The effective date of these requirements shall be either  
13 September 17, 1985, which is the date that the requirements originally became effective, of the date a  
14 subsequent modification, if any, became effective.

15 SEC. 412.1. FINDINGS. (a) Findings and Purposes. Existing public park facilities located  
16 in the downtown office districts are at or approaching capacity utilization by the daytime  
17 population in those districts. The need for additional public park and recreation facilities in the  
18 downtown districts will increase as the daytime population increases as a result of continued  
19 office development in those areas. While the open space requirements imposed on individual  
20 office and retail developments address the need for plazas and other local outdoor sitting  
21 areas to serve employees and visitors in the districts, such open space cannot provide the  
22 same recreational opportunities as a public park. In order to provide the City and County of  
23 San Francisco with the financial resources to acquire and develop public park and recreation  
24 facilities which will be necessary to serve the burgeoning daytime population in these districts,  
25 a Downtown Park Fund shall be established as set forth herein.

1            SEC. 412.2. DEFINITIONS. (b)–Definitions.– See Section 401 of this Article. For purposes of  
2 this Section 139, the following definitions shall apply:

3            (1)——"First certificate of occupancy" shall mean either a temporary certificate of occupancy  
4 or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code  
5 Section 307, whichever is issued first.

6            (2)——"Net addition of gross floor area of office use." shall mean gross floor area as defined in  
7 Planning Code Section 102.9 to be occupied by, or primarily serving, office use, less the gross floor  
8 area in any structure demolished or rehabilitated as part of the proposed office development project  
9 which gross floor area was used primarily and continuously for office use and was not accessory to any  
10 use other than office use for at least five years prior to the City Planning Department approval of the  
11 office development project subject to this Section, or for the life of the structure demolished or  
12 rehabilitated, whichever is shorter.

13            (3)——"Office development project." shall mean any new construction, addition, extension,  
14 conversion or enlargement, or combination thereof, of an existing structure which includes any gross  
15 floor area of office use; this term shall not include an addition to an existing structure which would add  
16 gross floor area in an amount less than 20 percent of the gross floor area of the existing structure.

17            (4)——"Office use" shall mean any structure or portion thereof intended for occupancy by  
18 business entities which will primarily provide clerical, professional or business services of the business  
19 entity, or which will provide clerical, professional, or business services to other business entities or to  
20 the public at that location including, but not limited to, the following services: banking, law,  
21 accounting, insurance, management, consulting, technical, and the office functions of manufacturing  
22 and warehousing businesses, and excluding design showcases. Such definition shall include all uses  
23 encompassed within the meaning of Planning Code Section 219; provided, however, that the term  
24 "office use" shall not include any such use which qualifies as an accessory use, as defined and  
25 regulated in Sections 204 through 204.5 of this Code.

1           (5) ~~—"Retail use" shall mean space within any structure or portion thereof intended or~~  
2 ~~primarily suitable for occupancy by persons or entities which supply commodities to customers on the~~  
3 ~~premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking businesses,~~  
4 ~~and the uses defined in Planning Code Sections 218 and 220 through 225, and also including all space~~  
5 ~~accessory to such retail use.~~

6           (6) ~~—"Sponsor" shall mean an applicant seeking approval for construction of an office~~  
7 ~~development project subject to this Section, the applicants' successors and assigns, and any entity~~  
8 ~~which controls or is under common control with the applicant.~~

9           SEC. 412.3. APPLICATION. ~~(c) Requirements. These requirements are in addition to any~~  
10 ~~applicable requirements set forth in Section 138. Section 412.1 et seq. shall apply to The sponsor of a~~  
11 ~~proposed office development project within the C-3-O, C-3-O (SD), C-3-R, C-3-G or C-3-S~~  
12 ~~Use Districts that results in a net addition of gross floor area of office use shall, prior to issuance of~~  
13 ~~the certificate of occupancy for the project, pay a fee the Treasurer of the City and County of San~~  
14 ~~Francisco to be deposited in the Downtown Park Fund the standards set forth in this Section. These~~  
15 ~~requirements are in addition to any applicable requirements set forth in Section 138 of this Code. The~~  
16 ~~certificate of occupancy for the project shall not be issued without proof of payment of the fee issued by~~  
17 ~~the Treasurer.~~

18           SEC. 412.4. IMPOSITION OF DOWNTOWN PARK FEE REQUIREMENT. ~~(d) Imposition of~~  
19 ~~the Downtown Park Fee.~~

20           (a) Determination of Requirements. The Department shall determine the applicability of  
21 Section 412.1 et seq. to any development project requiring a building or site permit and, if Section  
22 412.1 et seq. is applicable, the number of gross square feet of office use subject to its requirements, and  
23 shall impose this requirement as a condition of approval for issuance of the building or site permit for  
24 the project to address the need for additional public park and recreation facilities in the downtown  
25



1 districts. The project sponsor shall supply any information necessary to assist the Department in this  
2 determination.

3 (b) Amount of Fee. The amount of the fee shall be \$2 per square foot of the net  
4 addition of gross floor area of office use to be constructed as set forth in the final approved  
5 building or site permit. ~~The amount of the fee shall be reviewed every third year, beginning three~~  
6 ~~years after the effective date of this ordinance, by a joint session of the Recreation and Park~~  
7 ~~Commission and the City Planning Commission. The Commissions shall jointly review the fee to~~  
8 ~~determine whether inflation in land and development costs justifies an increase in the fee, and if they so~~  
9 ~~find, shall recommend an amendment of the fee provisions of this ordinance to the Board of~~  
10 ~~Supervisors.~~

11 (c) Department Notice to Development Fee Collection Unit at DBI Determination of  
12 Amount.

13 ~~(1) — Prior to approval by either the Department or the Planning Commission of a building or~~  
14 ~~site permit for a development project subject to this section, the Department shall issue a notice~~  
15 ~~complying with Planning Code Section 306.3 setting forth its initial determination of the net addition of~~  
16 ~~gross floor area of office use subject to this section.~~

17 ~~(2) — Any person may appeal the initial determination by delivering an appeal in writing to~~  
18 ~~the Planning Department within 15 days of the notice. If the initial determination is not appealed within~~  
19 ~~the time allotted, the initial determination shall become a final determination. If the initial~~  
20 ~~determination is appealed, the Planning Commission shall schedule a public hearing prior to the~~  
21 ~~approval of the development project by the Department or the Commission to determine the net~~  
22 ~~addition of gross floor area of office use subject to this ordinance. The public hearing may be~~  
23 ~~scheduled separately or simultaneously with a hearing under Sections 306.2, 309(h), 313.4, 314.5,~~  
24 ~~315.3 or a Discretionary Review hearing under San Francisco Municipal Code Part III, Section 26.~~

1 ~~The Commission shall make a final determination of the net addition of gross floor area of office use~~  
2 ~~subject to this section at the hearing.~~

3 (3) ~~The Planning Department or the Planning Commission shall set forth the final~~  
4 ~~determination of the net addition of gross floor area of office use subject to this Section in the~~  
5 ~~conditions of approval of any building or site permit application. After T~~he Planning Department  
6 ~~has made its final determination of the net addition of gross floor area of office use subject to Section~~  
7 ~~412.1 et seq. and the dollar amount of the Downtown Park Fee required, the Department shall~~  
8 ~~immediately notify the Development Fee Collection Unit at DBI Treasurer of the final its~~  
9 ~~determination, in addition to the other information required by Section 402(b) of this Article. of the~~  
10 ~~net addition of gross floor area of office use subject to this section within 30 days following the date of~~  
11 ~~the final determination. The Planning Department shall also notify the Department of Building~~  
12 ~~Inspection ("DBI") and the Mayor's Office of Housing that a development project is subject to this~~  
13 ~~Section at the time the Planning Department or the Planning Commission approves the building or site~~  
14 ~~permit for the development project.~~

15 (d)(4) Process for Revisions of Determination of Requirement. In the event that the ~~Planning~~  
16 Department or the ~~Planning~~ Commission takes action affecting any development project  
17 subject to Section 412.1 et seq. ~~this section~~ and such action is subsequently thereafter modified,  
18 superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by  
19 court action, the procedures of Section 402(c) of this Article shall be followed. ~~permit application for~~  
20 ~~such development project shall be remanded to the Department or the Commission to determine~~  
21 ~~whether the proposed project has been changed in a manner which affects the calculation of the~~  
22 ~~amount of housing required under this ordinance and, if so, the Department or the Commission shall~~  
23 ~~revise the requirement imposed on the permit application in compliance with this section within 60~~  
24 ~~days following such remand and notify the sponsor in writing of such revision or that a revision is not~~

1 ~~required. If the net addition of gross floor area of office use subject to this section is revised, the~~  
2 ~~Commission shall promptly notify the Treasurer of the revision.~~

3 ~~(f) — Procedure Regarding Temporary Permit of Occupancy. The Planning Department shall~~  
4 ~~impose a condition requiring payment of the Downtown Park fee on approval of any office development~~  
5 ~~project subject to this Section, requiring that such fee be paid prior to the issuance of the first~~  
6 ~~certificate of occupancy for the office development project certificate of occupancy. Upon the sponsor's~~  
7 ~~payment of the fee in full to the Treasurer and upon the sponsor's request, the Treasurer shall issue a~~  
8 ~~certification that the fee has been paid. The sponsor shall present such certification to DBI and the~~  
9 ~~Planning Department prior to the issuance by DBI of the first certificate of occupancy for the~~  
10 ~~development project. At the time the Planning Department or Planning Commission approves an~~  
11 ~~application for a site or building permit to construct an office development project subject to this~~  
12 ~~Section, the Planning Department shall notify in writing DBI and the Treasurer, identifying the office~~  
13 ~~development project. DBI shall not issue the certificate of occupancy without proof of payment of the~~  
14 ~~fee from the Treasurer. Any failure of the Treasurer, DBI, or the Planning Department to give any~~  
15 ~~notice under this Section shall not relieve a sponsor from compliance with this Section. The procedure~~  
16 ~~set forth in this Subsection is not intended to preclude enforcement of the provisions of this section~~  
17 ~~pursuant to any other section of this Code, or other authority under the laws of the State of California.~~

18 SEC. 412.5. DOWNTOWN PARK FUND. ~~(g) Downtown Park Fund.~~ There is hereby  
19 established a separate fund set aside for a special purpose entitled the Downtown Park Fund  
20 ("Fund"). All monies collected by DBI ~~the Treasurer~~ pursuant to this Section 412.1 et seq. shall  
21 be deposited in the Fund. All monies deposited in the Fund shall be used solely to acquire  
22 and develop public recreation and park facilities for use by the daytime population of the C-3  
23 Use Districts, except that ~~monies from the fund shall be used by the Recreation and Park~~  
24 ~~Commission and the Planning Commission to fund in a timely manner a nexus study to demonstrate the~~  
25 ~~relationship between office development projects and open space as set forth in subsection (a) of this~~

1 ~~Section and except that~~ \$100,000 of the monies from the fund shall be used to fund a nexus  
2 study, under the direction of the General Manager of the Recreation and Park Department, to  
3 examine whether the Downtown Park Fee should be imposed on uses other than office and  
4 on geographic areas of the City other than C-3 use districts. No Downtown Park Fee monies  
5 shall be expended on improvements for Ferry Park (generally Assessor's Block 202, Lots 6,  
6 14 and 15, and Assessor's Block 203, Lot 14) until such time as this nexus study is completed  
7 unless use of such Downtown Park Fee monies is approved by a financial committee of the  
8 Board of Supervisors. ~~The Controller's Office shall file an annual report with the Board of~~  
9 ~~Supervisors, beginning one year after the effective date of this ordinance, which report shall set forth~~  
10 ~~the amount of money collected in the Fund.~~

11 The Fund shall be administered jointly by the Recreation and Park Commission and the  
12 ~~City~~ Planning Commission. The two Commissions shall conduct business related to their  
13 duties under this Section at joint public hearings, which hearings may be initiated by either the  
14 Recreation and Park Commission or the ~~City~~ Planning Commission. A joint public hearing  
15 shall be held by the Commissions to elicit public comment on proposals for the acquisition of  
16 property using monies in the Fund. Notice of any joint public hearings shall be published in an  
17 official newspaper at least 20 days prior to the date of the hearing, which notice shall set forth  
18 the time, place, and purpose of the hearing. The hearing may be continued to a later date by a  
19 majority vote of the members of both Commissions present at the hearing. At a joint public  
20 hearing, a quorum of the membership of both Commissions may vote to allocate the monies  
21 in the Fund for acquisition of property for park use and/or for development of property for park  
22 use. The Recreation and Park Commission shall alone administer the development of the  
23 recreational and park facilities on any acquired property designated for park use by the Board  
24 of Supervisors, using such monies as have been allocated for that purpose at a joint hearing  
25 of both Commissions.

1            SEC. 412.6. COLLECTION OF FEE. ~~(h) Collection of Fee; Interest; Lien. (1) The~~  
2 Downtown Park Fee is due and payable to the Development Fee Collection Unit at DBI the  
3 Treasurer prior to issuance of the first construction document, certificate of occupancy with an  
4 option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy  
5 upon agreeing to pay a deferral surcharge that would be deposited into the Downtown Park Fund, in  
6 accordance with Section 107A.13.15 of the San Francisco Building Code paragraph (e) of this  
7 Section. If, for any reason, the fee remains unpaid following issuance of the certificate, any amount due  
8 shall accrue interest at the rate of one and one-half percent per month, or fraction thereof, from the  
9 date of issuance of the certificate until the date of final payment.

10            ~~(2) If, for any reason the fee imposed by this section remains unpaid following issuance of the~~  
11 ~~certificate of occupancy, the Treasurer shall initiate proceedings in accordance with Article XX of~~  
12 ~~Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the~~  
13 ~~Downtown Park Fee, including interest, a lien against all parcels used for the development project. The~~  
14 ~~Treasurer shall send all notices required by that Article to the owner of the property as well as the~~  
15 ~~sponsor. The Treasurer shall also prepare a preliminary report notifying the sponsor of a hearing to~~  
16 ~~confirm such report by the Board of Supervisors at least 10 days before the date of the hearing. The~~  
17 ~~report to the sponsor shall contain the sponsor's name, a description of the sponsor's development~~  
18 ~~project, a description of the parcels of real property to be encumbered as set forth in the Assessor's~~  
19 ~~Map Books for the current year, a description of the alleged violation of this Section, and shall fix a~~  
20 ~~time, date, and place for hearing. The Treasurer shall cause this report to be mailed to the sponsor and~~  
21 ~~each owner of record of the parcels of real property subject to lien. Except for the release of the lien~~  
22 ~~recording fee authorized by Administrative Code Section 10.237, all sums collected by the Tax~~  
23 ~~Collector under this Section shall be held in trust by the Treasurer and deposited in the Downtown~~  
24 ~~Park Fund established under subsection (f).~~

1           ~~(3) Any notice required to be given to a sponsor or owner shall be sufficiently given or served~~  
2 ~~upon the sponsor or owner for all purposes in this Section if personally served upon the sponsor or~~  
3 ~~owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor~~  
4 ~~or owner at the official address of the sponsor or owner maintained by the Tax Collector for the~~  
5 ~~mailing of tax bills or, if no such address is available, to the sponsor at the address of the development~~  
6 ~~project, and to the applicant for the site or building permit at the address on the permit application.~~

7           ~~(i) One-Time Fee Payment. In the event that a development project for which the fee imposed~~  
8 ~~by this Section has been fully paid is demolished or converted to a use or uses not subject to this~~  
9 ~~Section prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion~~  
10 ~~of the amount of the fee paid. The portion of the fee refunded shall be determined on a pro rata basis~~  
11 ~~according to the ratio of the remaining useful life of the project at the time of demolition or conversion~~  
12 ~~in relation to its total useful life. For purposes of this ordinance, the useful life of a development project~~  
13 ~~shall be 50 years.~~

14           SEC. 413 (formerly Section 313). JOBS-HOUSING LINKAGE PROGRAM; HOUSING  
15 REQUIREMENTS FOR LARGE-SCALE DEVELOPMENT PROJECTS.

16           Sections 413.1 through 413.11 ~~313.1 through 313.15~~, hereafter referred to as Section 413.1 et  
17 seq., set forth the requirements and procedures for the Jobs-Housing Linkage Program. The  
18 effective date of these requirements shall be either March 28, 1996, which is the date that the  
19 requirements originally became effective, or the date a subsequent modification, if any, became  
20 effective.

21           SEC. 413.1. ~~313.2~~. FINDINGS. The Board hereby finds and declares as follows:;

22           A. Large-scale entertainment, hotel, office, research and development, and retail  
23 developments in the City and County of San Francisco (~~hereinafter "City"~~) have attracted and  
24 continue to attract additional employees to the City, and there is a causal connection between  
25 such developments and the need for additional housing in the City, particularly housing

1 affordable to households of lower and moderate income. Such commercial uses in the City  
2 benefit from the availability of housing close by for their employees. However, the supply of  
3 housing units in the City has not kept pace with the demand for housing created by these new  
4 employees. Due to this shortage of housing, employers will have difficulty in securing a labor  
5 force, and employees, unable to find decent and affordable housing, will be forced to  
6 commute long distances, having a negative impact on quality of life, limited energy resources,  
7 air quality, social equity, and already overcrowded highways and public transport.

8 B. There is a low vacancy rate for housing affordable to persons of lower and  
9 moderate income. In part, this low vacancy rate is due to factors unrelated to large-scale  
10 commercial development, such as high interest rates, high land costs in the City, immigration  
11 from abroad, demographic changes such as the reduction in the number of persons per  
12 household, and personal, subjective choices by households that San Francisco is a desirable  
13 place to live. This low vacancy rate is also due in part to large-scale commercial  
14 developments which have attracted and will continue to attract additional employees and  
15 residents to the City. Consequently, some of the employees attracted to these developments  
16 are competing with present residents for scarce, vacant affordable housing units in the City.  
17 Competition for housing generates the greatest pressure on the supply of housing affordable  
18 to households of lower and moderate income. In San Francisco, office or retail uses of land  
19 generally yield higher income to the owner than housing. Because of these market forces, the  
20 supply of these affordable housing units will not be expanded. Furthermore, Federal and State  
21 housing finance and subsidy programs are not sufficient by themselves to satisfy the lower  
22 and moderate income housing requirements of the City.

23 C. As demonstrated in the "Jobs Housing Nexus Analysis" prepared by Keyser  
24 Marston Associates, Inc. in June 1997, construction of new housing units in the City  
25 decreased to a low of 288 units in 1993 compared to an average annual production of 1,330

1 units during the years 1980 through 1995. Overall housing production in the City should  
2 average approximately 2,200 units a year to keep up with the City's share of regional housing  
3 demand.

4 D. There is a continuing shortage of low- and moderate-income housing in San  
5 Francisco. Affordable housing production in the City averaged approximately 340 units per  
6 year during the years 1980 through 1995. However, the demand for new affordable housing  
7 will be approximately 1,300 units per year for the years 2000 through 2015.

8 E. Objective 1, Policy 7 of the Residence Element of the San Francisco *Master*  
9 *General* Plan calls for the provision of additional housing to accommodate the demands of new  
10 residents attracted to the City by expanding employment opportunities caused by the growth  
11 of large-scale commercial activities in the City. Such development projects should assist in  
12 meeting the City's housing needs by contributing to the provision of housing.

13 F. It is desirable to impose the cost of the increased burden of providing housing  
14 necessitated by large-scale commercial development projects directly upon the sponsors of  
15 the development projects by requiring that the project sponsors contribute land or money to a  
16 housing developer or pay a fee to the City to subsidize housing development as a condition of  
17 the privilege of development and to assist the community in solving those of its housing  
18 problems generated by the development.

19 G. The required housing exaction shall be based upon formulas derived in the  
20 report entitled "Jobs Housing Nexus Analysis" prepared by Keyser Marston Associates, Inc. in  
21 June 1997. The "Jobs Housing Nexus Analysis" demonstrates the validity of the nexus  
22 between new, large-scale entertainment, hotel, office, research and development, and retail  
23 development and the increased demand for housing in the City, and the numerical  
24 relationship between such development projects and the formulas for provision of housing set  
25 forth in Section 413.1 et seq. ~~this ordinance.~~



1           H.     In-lieu fees for new office construction to the City's Office Affordable Housing  
2 Production Program were last increased in 1994 to \$7.05 per square foot, based on the  
3 "Analysis of the OAHPP Formula prepared by the Department of City Planning in November  
4 1994." Existing law provides for potential increases to such fees up to 20% annually based on  
5 increases to the Average Area Purchase Price Safe Harbor Limitations for New Single-Family  
6 Residences for the San Francisco Primary Metropolitan Statistical Area ("PMSA") published  
7 by the Internal Revenue Service.

8           I.     The Internal Revenue Service last published its Average Area Purchase Price  
9 Safe Harbor Limitations for New Single-Family Residences for the San Francisco PMSA in  
10 1994. In 1998 and again in 2000, the City contracted for an analysis of average area purchase  
11 price for the San Francisco PMSA, in lieu of IRS publication of the index. The 2000 report  
12 prepared by Vernazza Wolfe Associates for mortgage purposes, which was certified by Orrick,  
13 Herrington & Sutcliffe, indicates that the 1999 updated purchase price figures for new  
14 construction are \$431,568, a 73.3% increase over the 1994 purchase price of \$248,969.

15           J.     If OAHPP fees had been increased consistent with these increases in the  
16 Average Area Purchase Price Safe Harbor Limitations for New Single-Family Residences for  
17 the San Francisco PMSA, the OAHPP in-lieu fee for net new office construction would be  
18 \$12.22 per square foot, or approximately 54% of the maximum derived by the "Jobs Housing  
19 Nexus Analysis" prepared by Keyser Marston Associates, Inc. in June 1997.

20           K.     Since preparation of the Keyser Marston "Jobs Housing Nexus Analysis," the  
21 Bay Area has seen dramatic increases in land acquisition costs for housing, the cost of new  
22 housing development and the affordability gap for low to moderate income workers seeking  
23 housing. Commute patterns for the region have also changed, with more workers who work  
24 outside of San Francisco seeking to live in the City, thus increasing demand for housing and  
25 decreasing housing availability.

1           L.       Because the shortage of affordable housing created by large-scale commercial  
2 development in the City can be expected to continue for many years, it is necessary to  
3 maintain the affordability of the housing units constructed by developers of such projects  
4 under this program. In order to maintain the long-term affordability of such housing, the City is  
5 authorized to enforce affordability requirements through mechanisms such as shared  
6 appreciation mortgages, deed restrictions, enforcement instruments, and rights of first refusal  
7 exercisable by the City at the time of resale of housing units built under the program.

8           M.       Objective 8, Policy 2 of the Residence Element of the San Francisco *Master*  
9 *General* Plan encourages the *Planning* Commission to periodically reassess requirements  
10 placed on large-scale commercial development under the Office Affordable Housing  
11 Production Program ("OAHPP"), predecessor to the Jobs-Housing Linkage Program. ~~*To that*~~  
12 ~~*end, within 18 months following the effective date of this ordinance, the Director of Planning shall*~~  
13 ~~*report to the Commission, the Board of Supervisors, and the Mayor on the current supply and demand*~~  
14 ~~*of affordable housing in the City, the status of compliance with this ordinance and the efficacy of this*~~  
15 ~~*ordinance in mitigating the City's shortage of affordable housing available to employees working in*~~  
16 ~~*development projects subject to this ordinance. Thereafter, if in the discretion of the Director of*~~  
17 ~~*Planning there has been a substantial change in the San Francisco and/or regional economies since the*~~  
18 ~~*effective date of this ordinance, the Director of Planning may recommend to the Commission, the*~~  
19 ~~*Board of Supervisors, and the Mayor that this ordinance be amended or rescinded to alleviate any*~~  
20 ~~*undue burden on commercial development in the City that the ordinance may impose.*~~

21           SEC. 413.2. DEFINITIONS. See Section 401 of this Article. ~~*The following definitions shall*~~  
22 ~~*govern interpretation of this ordinance:*~~

23           (1) — ~~*"Affordable housing project." shall mean a housing project containing units constructed*~~  
24 ~~*to satisfy the requirements of Sections 313.5 or 313.7 of this ordinance or receiving funds from the*~~  
25 ~~*Citywide Affordable Housing Fund under Section 313.12.*~~

1           (2) — ~~"Affordable to a household." shall mean a purchase price that a household can afford to~~  
2 ~~pay based on an annual payment for all housing costs of 33 percent of the combined household annual~~  
3 ~~net income, a 10 percent down payment, and available financing, or a rent that a household can afford~~  
4 ~~to pay based on an annual payment for all housing costs of 30 percent of the combined annual net~~  
5 ~~income.~~

6           (3) — ~~"Affordable to qualifying households" shall mean:~~

7           (A) — ~~With respect to owned units, the average purchase price on the initial sale of all~~  
8 ~~affordable owned units in an affordable housing project shall not exceed the allowable average~~  
9 ~~purchase price. Each unit shall be sold:~~

10           (i) — ~~Only to households with an annual net income equal to or less than that of a household~~  
11 ~~of moderate income; and~~

12           (ii) — ~~At or below the maximum purchase price.~~

13           (B) — ~~With respect to rental units in an affordable housing project, the average annual rent~~  
14 ~~shall not exceed the allowable average annual rent. Each unit shall be rented:~~

15           (i) — ~~Only to households with an annual net income equal to or less than that of a household~~  
16 ~~of lower income;~~

17           (ii) — ~~At or less than the maximum annual rent.~~

18           (4) — ~~"Allowable average purchase price." shall mean:~~

19           (A) — ~~For all affordable one-bedroom units in a housing project, a price affordable to a two-~~  
20 ~~person household of median income as set forth in Title 25 of the California Code of Regulations~~  
21 ~~Section 6932 ("Section 6932") on January 1st of that year;~~

22           (B) — ~~For all affordable two-bedroom units in a housing project, a price affordable to a three-~~  
23 ~~person household of median income as set forth in Section 6932 on January 1st of that year;~~

24           (C) — ~~For all affordable three-bedroom units in a housing project, a price affordable to a four-~~  
25 ~~person household of median income as set forth in Section 6932 on January 1st of that year;~~

1           (D) — ~~For all affordable four-bedroom units in a housing project, a price affordable to a five-~~  
2 ~~person household of median income as set forth in Section 6932 on January 1st of that year.~~

3           (5) — ~~"Allowable average annual rent" shall mean:~~

4           (A) — ~~For all affordable one-bedroom units in a housing project, 18 percent of the median~~  
5 ~~income for a household of two persons as set forth in Section 6932 on January 1st of that year;~~

6           (B) — ~~For all affordable two-bedroom units in a housing project, 18 percent of the median~~  
7 ~~income for a household of three persons as set forth in Section 6932 on January 1st of that year;~~

8           (C) — ~~For all affordable three-bedroom units in a housing project, 18 percent of the median~~  
9 ~~income for a household of four persons as set forth in Section 6932 on January 1st of that year;~~

10          (D) — ~~For all affordable four-bedroom units in a housing project, 18 percent of the median~~  
11 ~~income for a household of five persons as set forth in Section 6932 on January 1st of that year.~~

12          (6) — ~~"Annual net income." shall mean net income as defined in Title 25 of the California~~  
13 ~~Code of Regulations Section 6916.~~

14          (7) — ~~"Average annual rent." shall mean the total annual rent for the calendar year charged~~  
15 ~~by a housing project for all affordable rental units in the project of an equal number of bedrooms~~  
16 ~~divided by the total number of affordable units in the project with that number of bedrooms.~~

17          (8) — ~~"Average purchase price." shall mean the purchase price for all affordable owned units~~  
18 ~~in an affordable housing project of an equal number of bedrooms divided by the total number of~~  
19 ~~affordable units in the project with that number of bedrooms.~~

20          (9) — ~~"City" shall mean the City and County of San Francisco.~~

21          (10) — ~~"Community apartment." shall be As defined in San Francisco Subdivision Code Section~~  
22 ~~1308(b).~~

23          (11) — ~~"Condominium." shall be aAs defined in California Civil Code Section 783.~~

24          (12) — ~~"DBI" shall mean the Department of Building Inspection.~~

1           (13) ~~"Department" shall mean the Planning Department or the Planning Department's~~  
2 ~~designee, including the Mayor's Office of Housing and other City agencies or departments.~~

3           (14) ~~"Entertainment development project" shall mean any new construction, addition,~~  
4 ~~extension, conversion, or enlargement, or combination thereof, of an existing structure which includes~~  
5 ~~any gross square feet of entertainment use.~~

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

16           (16) ~~"First certificate of occupancy" shall mean either a temporary certificate of occupancy~~  
17 ~~or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code~~  
18 ~~Section 109, whichever is issued first.~~

19           (17) ~~"Hotel development project" shall mean any new construction, addition, extension,~~  
20 ~~conversion, or enlargement, or combination thereof, of an existing structure which includes any gross~~  
21 ~~square feet of hotel use.~~

22           (18) ~~"Hotel use" shall mean space within a structure or portion thereof intended or primarily~~  
23 ~~suitable for rooms, or suites of two or more rooms, each of which may or may not feature a bathroom~~  
24 ~~and cooking facility or kitchenette and is designed to be occupied by a visitor or visitors to the City who~~  
25 ~~pays for accommodations on a daily or weekly basis but who do not remain for more than 31~~

1 ~~consecutive days. Under this ordinance, "hotel use" shall include all office and other uses accessory to~~  
2 ~~the renting of guest rooms, but excluding retail uses and office uses not accessory to the hotel use.~~

3 ~~(19) — "Household." shall mean any person or persons who reside or intend to reside in the~~  
4 ~~same housing unit.~~

5 ~~(20) — "Household of lower income." shall mean a household composed of one or more persons~~  
6 ~~with a combined annual net income for all adult members which does not exceed the qualifying limit for~~  
7 ~~a lower income family of a size equivalent to the number of persons residing in such household, as set~~  
8 ~~forth for the County of San Francisco in Title 25 of the California Code of Regulations Section 6932.~~

9 ~~(21) — "Household of median income." shall mean a household composed of one or more~~  
10 ~~persons with a combined annual net income for all adult members which does not exceed the qualifying~~  
11 ~~limit for a median income family of a size equivalent to the number of persons residing in such~~  
12 ~~household, as set forth for the County of San Francisco in Title 25 of the California Code of~~  
13 ~~Regulations Section 6932.~~

14 ~~(22) — "Household of moderate income." shall mean a household composed of one or more~~  
15 ~~persons with a combined annual net income for all adult members which does not exceed the qualifying~~  
16 ~~limit for a moderate income family of a size equivalent to the number of persons residing in such~~  
17 ~~household, as set forth for the County of San Francisco in Title 25 of the California Code of~~  
18 ~~Regulations Section 6932.~~

19 ~~(23) — "Housing developer." shall mean any business entity building housing units which~~  
20 ~~receives a payment from a sponsor for use in the construction of the housing units. A housing developer~~  
21 ~~may be (a) the same business entity as the sponsor, (b) an entity in which the sponsor is a partner, joint~~  
22 ~~venturor, or stockholder, or (c) an entity in which the sponsor has no control or ownership.~~

23 ~~(24) — "Housing unit" or "unit." shall mean a dwelling unit as defined in San Francisco~~  
24 ~~Housing Code Section 401.~~

1           (25) — "*Interim Guidelines*" shall mean the *Office Housing Production Program Interim*  
2 *Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.*

3           (26) — "*Maximum annual rent.*" shall mean the maximum rent that a housing developer may  
4 *charge any tenant occupying an affordable unit for the calendar year. The maximum annual rent shall*  
5 *be 30 percent of the annual income for a lower-income household as set forth in Section 6932 on*  
6 *January 1st of each year for the following household sizes:*

7           (A) — *For all one-bedroom units, for a household of two persons;*

8           (B) — *For all two-bedroom units, for a household of three persons;*

9           (C) — *For all three-bedroom units, for a household of four persons;*

10          (D) — *For all four-bedroom units, for a household of five persons.*

11          (27) — "*Maximum purchase price.*" shall mean the maximum purchase price that a household  
12 *of moderate income can afford to pay for an owned unit based on an annual payment for all housing*  
13 *costs of 33 percent of the combined household annual net income, a 10 percent down payment, and*  
14 *available financing, for the following household sizes:*

15          (A) — *For all one-bedroom units, for a household of two persons;*

16          (B) — *For all two-bedroom units, for a household of three persons;*

17          (C) — *For all three-bedroom units, for a household of four persons;*

18          (D) — *For all four-bedroom units, for a household of five persons.*

19          (28) — "*MOH*" shall mean the *Mayor's Office of Housing.*

20          (29) — "*Net addition of gross square feet of entertainment space.*" shall mean *gross floor area*  
21 *as defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily serving,*  
22 *entertainment use, less the gross floor area in any structure demolished or rehabilitated as part of the*  
23 *proposed entertainment development project that was used primarily and continuously for*  
24 *entertainment, hotel, office, research and development, or retail use and was not accessory to any use*  
25 *other than entertainment, hotel, office, research and development, or retail use, for five years prior to*

1 ~~Planning Commission approval of an entertainment development project subject to this Section or for~~  
2 ~~the life of the structure demolished or rehabilitated, whichever is shorter, so long as such space was~~  
3 ~~subject to this ordinance or the Interim Guidelines.~~

4 (30) ~~—"Net addition of gross square feet of hotel space." shall mean gGross floor area as~~  
5 ~~defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily serving, hotel~~  
6 ~~use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed hotel~~  
7 ~~development project that was used primarily and continuously for entertainment, hotel, office, research~~  
8 ~~and development, or retail use and was not accessory to any use other than entertainment, hotel, office,~~  
9 ~~research and development, or retail use, for five years prior to Planning Commission approval of a~~  
10 ~~hotel development project subject to this Section, or for the life of the structure demolished or~~  
11 ~~rehabilitated, whichever is shorter, so long as such space was subject to this ordinance or the Interim~~  
12 ~~Guidelines.~~

13 (31) ~~—"Net addition of gross square feet of office space." shall mean gross floor area as~~  
14 ~~defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily serving, office~~  
15 ~~use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed office~~  
16 ~~development project that was used primarily and continuously for entertainment, hotel, office, research~~  
17 ~~and development, or retail use and was not accessory to any use other than entertainment, hotel, office,~~  
18 ~~research and development, or retail use for five years prior to Planning Commission approval of an~~  
19 ~~office development project subject to this Section, or for the life of the structure demolished or~~  
20 ~~rehabilitated, whichever is shorter.~~

21 (32) ~~—"Net addition of gross square feet of research and development space." shall mean gross~~  
22 ~~floor area as defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily~~  
23 ~~serving, research and development use, less the gross floor area in any structure demolished or~~  
24 ~~rehabilitated as part of the proposed research and development project that was used primarily and~~  
25 ~~continuously for entertainment, hotel, office, research and development, or retail use and was not~~



1 ~~accessory to any use other than entertainment, hotel, office, research and development, or retail use,~~  
2 ~~for five years prior to Planning Commission approval of a research and development project subject to~~  
3 ~~this Section or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

4 (33) ~~—"Net addition of gross square feet of retail space." shall mean gross floor area as~~  
5 ~~defined in San Francisco Planning Code Section 102.9 to be occupied by, or primarily serving, retail~~  
6 ~~use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed retail~~  
7 ~~development project that was used primarily and continuously for entertainment, hotel, office, research~~  
8 ~~and development, or retail use and was not accessory to any use other than entertainment, hotel, office,~~  
9 ~~research and development, or retail use, for five years prior to Planning Commission approval of a~~  
10 ~~retail development project subject to this Section, or for the life of the structure demolished or~~  
11 ~~rehabilitated, whichever is shorter.~~

12 (34) ~~"Office development project" shall mean any new construction, addition, extension,~~  
13 ~~conversion, or enlargement, or combination thereof, of an existing structure which includes any gross~~  
14 ~~square feet of office use.~~

15 (35) (A) ~~"Office use" shall mean space within a structure or portion thereof intended or~~  
16 ~~primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or~~  
17 ~~provide to others at that location services including, but not limited to, the following: Professional,~~  
18 ~~banking; insurance; management; consulting; technical; sales; and design; and the non-accessory~~  
19 ~~office functions of manufacturing and warehousing businesses; all uses encompassed within the~~  
20 ~~definition of "office" at Section 219 of this Code; multimedia, software development, web design,~~  
21 ~~electronic commerce, information technology and other computer based technology; provided,~~  
22 ~~however, that for purposes of this Section it shall include all uses encompassed within the definition of~~  
23 ~~"administrative services" at Section 790.106 or Section 890.106 of this Code; all "business or~~  
24 ~~professional services" as proscribed at Section 890.108 of this Code excepting only those uses which~~  
25 ~~are limited to the Chinatown Mixed Use District; all "business services," as described at Section~~

1 ~~890.11 of this Code which are conducted in space designated for office use under the San Francisco~~  
2 ~~Building Code and which are not excluded pursuant to Subsection B below.~~

3 ~~(B) — Under this ordinance, "office use" shall exclude: retail uses; repair; any business~~  
4 ~~characterized by the physical transfer of tangible goods to customers on the premises; wholesale~~  
5 ~~shipping, receiving and storage; research and development; and design showcases or any other space~~  
6 ~~intended and primarily suitable for display of goods.~~

7 ~~(36) "Ordinance" shall mean San Francisco Planning Code Sections 313.1 through 313.14.~~

8 ~~(37) — "Owned unit." shall mean a unit affordable to qualifying households which is a~~  
9 ~~condominium, stock cooperative, community apartment, or detached single family home. The owner or~~  
10 ~~owners of an owned unit must occupy the unit as their primary residence.~~

11 ~~(38) — "Owner." shall mean tThe record owner of the fee or a vendee in possession.~~

12 ~~(39) — "Rent" or "rental." shall mean the total charges for rent, utilities, and related housing~~  
13 ~~services to each household occupying an affordable unit.~~

14 ~~(40) — "Rental unit." shall mean a unit affordable to qualifying households which is not a~~  
15 ~~condominium, stock cooperative, or community apartment.~~

16 ~~(41) — "Research and Development ("R&D") project" shall mean any new construction,~~  
17 ~~addition, extension, conversion, or enlargement, or combination thereof, of an existing structure which~~  
18 ~~includes any gross square feet of R&D use.~~

19 ~~(42) "Research and development use" shall mean space within any structure or portion thereof~~  
20 ~~intended or primarily suitable for basic and applied research or systematic use of research knowledge~~  
21 ~~for the production of materials, devices, systems, information or methods, including design,~~  
22 ~~development and improvement of products and processing, including biotechnology, which involves the~~  
23 ~~integration of natural and engineering sciences and advanced biological techniques using organisms,~~  
24 ~~cells, and parts thereof for products and services, excluding laboratories which are defined as light~~  
25 ~~manufacturing uses consistent with Section 226 of the Planning Code.~~

1           ~~(43) "Retail development project" shall mean any new construction, addition, extension,~~  
2 ~~conversion, or enlargement, or combination thereof, of an existing structure which includes any gross~~  
3 ~~square feet of retail use.~~

4           ~~(44) "Retail use" shall mean space within any structure or portion thereof intended or primarily~~  
5 ~~suitable for occupancy by:~~

6           ~~(A) — Persons or entities which supply commodities to customers on the premises including,~~  
7 ~~but not limited to, stores, shops, restaurants, bars, eating and drinking businesses, and the uses defined~~  
8 ~~in San Francisco Planning Code Sections 218 and 220 through 225, and also including all space~~  
9 ~~accessory to such retail use; and~~

10          ~~(B) — All space accessory to such retail use.~~

11          ~~(45) — "Section 6932." shall mean Section 6932 of Title 25 of the California Code of~~  
12 ~~Regulations as such section applies to the County of San Francisco.~~

13          ~~(46) — "Sponsor" shall mean an applicant seeking approval for construction of an office~~  
14 ~~development project subject to this Section, such applicants' successors and assigns, and/or any entity~~  
15 ~~which controls or is under common control with such applicant.~~

16          ~~(47) — "Stock cooperative." shall be as defined in California Business and Professions Code~~  
17 ~~Section 11003.2.~~

18          SEC. ~~413.3.~~ ~~313.3.~~ APPLICATION.

19          (a)     Where an environmental evaluation application for the development project is  
20 filed on or after January 1, 1999, ~~Section 413.1 et seq. this ordinance~~ shall apply to:

21               (1)     Any entertainment development project proposing the net addition of 25,000 or  
22 more square feet of entertainment space;

23               (2)     Any hotel development project proposing the net addition of 25,000 or more  
24 square feet of hotel space;

25

1 (3) Any office development project proposing the net addition of 25,000 or more  
2 square feet of office space;

3 (4) Any research and development project proposing the net addition of 25,000 or  
4 more square feet of research and development space; and

5 (5) Any retail development project proposing the net addition of 25,000 or more  
6 square feet of retail space, except as provided by Subsection (b)(8) below.

7 (b) Section 413.1 et seq. ~~This ordinance~~ shall not apply to:

8 (1) Any development project other than a development project described in  
9 Subsection (a) of this Section, including those portions of a development project consisting of  
10 the net addition of square feet of any type of space not described in Subsection (a) of this  
11 Section;

12 (2) Those portions of a development project described in Subsection (a) of this  
13 Section located on property owned by the United States or any of its agencies or leased by  
14 the United States or any of its agencies for a period in excess of 50 years, with the exception  
15 of such property not used exclusively for a governmental purpose;

16 (3) Those portions of a development project described in Subsection (a) of this  
17 Section located on property owned by the State of California or any of its agencies, with the  
18 exception of such property not used exclusively for a governmental or educational purpose;

19 (4) Those portions of a development project described in Subsection (a) of this  
20 Section located on property under the jurisdiction of the San Francisco Redevelopment  
21 Agency or the Port of San Francisco where the application of Section 413.1 et seq. ~~this ordinance~~  
22 is prohibited by California or local law;

23 (5) Any office development project approved by the ~~Planning~~ Commission prior to  
24 August 18, 1985 that was not subject to the Interim Guidelines; or  
25

1 (6) Any office development project approved by the *Planning* Commission prior to  
2 August 18, 1985 that was subject to the Interim Guidelines. If the action of the *Planning*  
3 Commission affecting such office development project is thereafter modified, superseded,  
4 vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action in  
5 a manner affecting the amount of housing required under the Interim Guidelines, the permit  
6 application on remand to the *Planning* Commission shall remain subject to the Interim  
7 Guidelines.

8 (7) Any major phase or development project in Mission Bay North or South to the  
9 extent application of Section 413.1 et seq. ~~this ordinance~~ would be inconsistent with the Mission  
10 Bay North Redevelopment Plan and Interagency Cooperation Agreement or the Mission Bay  
11 South Redevelopment Plan and Interagency Cooperation Agreement, as applicable.

12 (8) Any (i) free-standing retail use, encompassed in the definition of "pharmacy" as  
13 proscribed in Section 790.48(b) of this Code and which does not exceed more than 50,000  
14 square feet of retail or other space; or (ii) any free-standing retail use encompassed in the  
15 definition of "general grocery" proscribed in Section 790.102(a) of this Code, and which does  
16 not exceed more than 75,000 square feet of retail or other space; or (iii) any mixed-use space  
17 consisting of residential space and pharmacy retail space not exceeding 50,000 square feet,  
18 or general grocery retail space not exceeding 75,000 square feet. For purposes of this  
19 Section, the term "free-standing" shall mean an independent building or structure used  
20 exclusively by a single use and any accessory uses, and that is not part of a larger  
21 development project on the same environmental evaluation application.

22 SEC. ~~413.4~~ 313.4. IMPOSITION OF HOUSING REQUIREMENT.

23 (a) Determination of Requirements. The *Planning* Department ~~or the Planning~~  
24 ~~Commission~~ shall determine the applicability of Section 413.1 et seq. to any development project  
25 requiring a building or site permit, and if Section 413.1 et seq. is applicable, the number of gross

1 square feet of each type of space subject to its requirements, and shall impose these requirements as a  
2 condition of ~~on the~~ approval for issuance of the building or site permit for the development project  
3 application for a development project subject to this ordinance in order to mitigate the impact on the  
4 availability of housing which will be caused by the employment facilitated by the development  
5 that project. The condition shall require that the applicant pay or contribute land suitable for housing  
6 to a housing developer to construct housing or pay an in-lieu fee to the City Treasurer which shall  
7 thereafter be used exclusively for the development of housing affordable to households of lower or  
8 moderate income. The project sponsor shall supply any information necessary to assist the Department  
9 in this determination.

10 (b) Notice to Development Fee Collection Unit of Requirements. After the Department has  
11 made its final determination of the net addition of gross square feet of each type of space subject to  
12 Section 413.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its  
13 determination in addition to the other information required by Section 402(b) of this Article.

14 (c) Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site permit  
15 for a development project subject to the requirements of Section 413.1 et seq., the sponsor shall elect  
16 one of the three options listed below to fulfill any requirements imposed as a condition of approval and  
17 notify the Department of their choice of the following:

18 (1) Contribute of a sum or land of value at least equivalent to the in-lieu fee, according to  
19 the formulas set forth in Section 413.6, to one or more housing developers who will use the funds or  
20 land to construct housing units pursuant to Section 413.5; or

21 (2) Pay an in-lieu fee to the Development Fee Collection Unit at DBI according to the  
22 formula set forth in Section 413.6; or

23 (3) Combine the above options pursuant to Section 413.8.

24 (b) Prior to either the Department's or the Commission's approval of a building or site  
25 permit for a development project subject to this ordinance, the Department shall issue a notice

1 ~~complying with Planning Code Section 306.3 setting forth its initial determination of the net addition of~~  
2 ~~gross square feet of each type of space subject to this ordinance.~~

3 ~~(c) — Any person may appeal the initial determination by delivering an appeal in writing to~~  
4 ~~the Department within 15 days of such notice. If the initial determination is not appealed within the~~  
5 ~~time allotted, the initial determination shall become a final determination. If the initial determination is~~  
6 ~~appealed, the Commission shall schedule a public hearing prior to the approval of the development~~  
7 ~~project by the Department or the Commission to determine the net addition of gross square feet of each~~  
8 ~~type of space subject to this ordinance. The public hearing may be scheduled separately or~~  
9 ~~simultaneously with a hearing under Planning Code Sections 139(g), 306.2, 309(h), 314.5, 315.3 or a~~  
10 ~~Discretionary Review hearing under San Francisco Municipal Code Part III, Section 26. The~~  
11 ~~Commission shall make a final determination of the net addition of gross square feet of each type of~~  
12 ~~space subject to this ordinance at the hearing.~~

13 ~~(d) — The final determination of the net addition of gross square feet of each type of space~~  
14 ~~subject to this ordinance shall be set forth in the conditions of approval of any building or site permit~~  
15 ~~application approved by the Department or the Commission. The Planning Department shall notify the~~  
16 ~~Treasurer, DBI, and MOH of the final determination of the net addition of gross square feet of each~~  
17 ~~type of space subject to this ordinance within 30 days following the date of final determination.~~

18 ~~(d) Department's Notice to Development Fee Collection Unit of Sponsor's Choice. After the~~  
19 ~~project sponsor has notified the Department of the choice to fulfill the requirements of Section 413.1 et~~  
20 ~~seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the~~  
21 ~~project sponsor's choice.~~

22 ~~(e) Development Fee Collection Unit Notice to Department Prior to Issuance of the First~~  
23 ~~Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing~~  
24 ~~or electronically to the Department prior to issuing the first certificate of occupancy for any~~  
25 ~~development project subject to Section 413.1 et seq. that has elected to fulfill all or part of the~~

1 requirements with an option other than payment of an in-lieu fee. If the Department notifies the Unit at  
2 such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and  
3 all certificates of occupancy until the subject project is brought into compliance with the requirements  
4 of Section 413.1 et seq.

5 (e) Process for Revisions of Determination of Requirements. In the event that the  
6 Department or the Commission takes action affecting any development project subject to  
7 Section 413.1 et seq. this ordinance and such action is subsequently thereafter modified,  
8 superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by  
9 court action, the procedures of Section 402(c) shall be followed. ~~permit application for such~~  
10 ~~development project shall be remanded to the Commission to determine whether the proposed project~~  
11 ~~has been changed in a manner which affects the calculation of the amount of housing required under~~  
12 ~~this ordinance and, if so, the Commission shall revise the housing requirement imposed on the permit~~  
13 ~~application in compliance with this ordinance within 60 days of such remand and notify the sponsor in~~  
14 ~~writing of such revision or that a revision is not required. If the net addition of gross square feet of any~~  
15 ~~type of space subject to this ordinance is revised, the Commission shall notify the Treasurer, DBI and~~  
16 ~~MOH of the nature and extent of the revision.~~

17 (f) — ~~The sponsor shall supply all information to the Department and the Commission~~  
18 ~~necessary to make a determination as to the applicability of this ordinance and the number of gross~~  
19 ~~square feet of each type of space subject to this ordinance.~~

20 (g) — ~~The sponsor of any development project subject to this ordinance shall have the option~~  
21 ~~of:~~

22 (1) — ~~Contributing a sum or land of value at least equivalent to the in-lieu fee according to the~~  
23 ~~formulas set forth in Section 313.6 to one or more housing developers who will use the funds or land to~~  
24 ~~construct housing units pursuant to Section 313.5 for each type of space subject to this ordinance; or~~





1 The housing units required to be constructed under the above formula must be  
2 affordable to qualifying households continuously for 50 years. If the sponsor elects to  
3 contribute to more than one distinct housing development under this Section, the sponsor  
4 shall not receive credit for its monetary contribution to any one development in excess of the  
5 amount of the in-lieu fee, as adjusted under Section ~~413.6~~ 313.6, multiplied by the number of  
6 units in such housing development.

7 (b) ~~Within one year of the final determination under Section 313.4(e) or a revised final~~  
8 ~~determination under Section 313.4(e), or p~~Prior to the issuance by DBI of the first site or building  
9 permit for a development project subject to Section 413.1 et seq. this ordinance, whichever occurs  
10 ~~first~~, the sponsor shall submit to the ~~Planning~~ Department, with a copy to MOH:

11 (1) A written housing development plan identifying the housing project or projects to  
12 receive funds or land from the sponsor and the proposed mechanism for enforcing the  
13 requirement that the housing units constructed will be affordable to qualifying households for  
14 50 years; and

15 (2) A certification that the sponsor has made a binding commitment to contribute an  
16 amount of money or land of value at least equivalent to the amount of the in-lieu fee that  
17 would otherwise be required under Section ~~413.6~~ 313.6 to one or more housing developers  
18 and that the housing developer or developers shall use such funds or lands to develop the  
19 housing subject to this Section.

20 (3) A self-contained appraisal report as defined by the Uniform Standards of  
21 Professional Appraisal Practice prepared by an M.A.I. appraiser of the fair market value of any  
22 land to be contributed by the sponsor to a housing developer. The date of value of the  
23 appraisal shall be the date on which the sponsor submits the housing development plan and  
24 certification to the ~~Planning~~ Department.

1           If the sponsor fails to comply with these requirements within one year of the final  
2 determination or revised final determination, it shall be deemed to have elected to pay the in-  
3 lieu fee under Section 413.6 ~~313.6~~, and any deferral surcharge, in order to comply with Section  
4 413.1 et seq. ~~this ordinance~~. In the event that the sponsor fails to pay the in-lieu fee within the  
5 time required by Section 413.6 ~~313.6~~, DBI shall deny any and all site or building permits or  
6 certificates of occupancy for the development project until the ~~Treasurer notifies DBI and MOH~~  
7 ~~that~~ such payment has been made or land contributed, and the Development Fee Collection Unit  
8 at DBI Treasurer shall immediately initiate lien proceedings against the sponsor's property  
9 pursuant to Section 408 of this Article and Section 107A.13 of the San Francisco Building Code  
10 ~~313.9~~ to recover the fee.

11           (c)     Within 30 days after the sponsor has submitted a written housing development  
12 project plan and, if necessary, an appraisal to the *Planning* Department and MOH under  
13 Subsection(b) of this Section, the *Planning* Department shall notify the sponsor in writing of its  
14 initial determination as to whether the plan and appraisal are in compliance with this Section,  
15 publish the initial determination in the next *Planning* Commission calendar, and cause a public  
16 notice to be published in an official newspaper of general circulation stating that such housing  
17 development plan has been received and stating the *Planning* Department's initial  
18 determination. In making the initial determination for an application where the sponsor elects  
19 to contribute land to a housing developer, the *Planning* Department shall consult with the  
20 Director of Property and include within its initial determination a finding as to the fair market  
21 value of the land proposed for contribution to a housing developer. Within 10 days after such  
22 written notification and published notice, the sponsor or any other person may request a  
23 hearing before the Commission to contest such initial determination. If the *Planning*  
24 Department receives no request for a hearing within such 10-day period, the determination of  
25 the *Planning* Department shall become a final determination. Upon receipt of any timely

1 request for hearing, the *Planning* Department shall schedule a hearing before the Commission  
2 within 30 days. The scope of the hearing shall be limited to the compliance of the housing  
3 development plan and appraisal with this Section, and shall not include a challenge to the  
4 amount of the housing requirement imposed on the development project by the Department or  
5 the Commission. At the hearing, the Commission may either make such revisions to the  
6 *Planning* Department's initial determination as it may deem just, or confirm the *Planning*  
7 Department's initial determination. The Commission's determination shall then become a final  
8 determination, and the *Planning* Department shall provide written notice of the final  
9 determination to the sponsor, MOH, and to any person who timely requested a hearing of the  
10 *Planning* Department's determination. The *Planning* Department shall also provide written  
11 notice to ~~the Treasurer and~~ MOH that the housing units to be constructed pursuant to such plan  
12 are subject to Section 413.1 et seq. this ordinance.

13 ~~(d) — In making a determination as to whether a sponsor's housing development plan complies~~  
14 ~~with this Section, the Director of Planning and the Commission shall credit to the sponsor any excess~~  
15 ~~Interim Guideline credits or excess credits that the sponsor elects to apply against its housing~~  
16 ~~requirement. The remaining housing units required shall be subject to the requirements of Subsection~~  
17 ~~(a) of this Section.~~

18 ~~(d) (e)~~ Prior to the issuance by DBI of the first construction document ~~site or building~~  
19 ~~permit~~ for a development project subject to this Section, the sponsor must:

20 (1) Provide written evidence to the *Planning* Department ~~in writing~~ that it has paid in  
21 full the sum or transferred title of the land required by Subsection (a) of this Section to one or  
22 more housing developers;

23 (2) Notify the *Planning* Department that construction of the housing units has  
24 commenced, evidenced by:

1 (A) The City's issuance of site and building permits for the entire housing  
2 development project,

3 (B) Written authorization from the housing developer and the construction lender  
4 that construction may proceed,

5 (C) An executed construction contract between the housing developer and a general  
6 contractor, and

7 (D) The issuance of a performance bond enforceable by the construction lender for  
8 100 percent of the replacement cost of the housing project; and

9 (3) Provide evidence satisfactory to the *Planning* Department that the units required  
10 to be constructed will be affordable to qualifying households for 50 years through an  
11 enforcement mechanism approved by the *Planning* Department pursuant to Subsections (b)  
12 through (d) of this Section.

13 ~~*DBI shall provide notice in writing to, the Planning Department and MOH at least five business*~~  
14 ~~*days prior to issuance of the first site or building permit for any development project for which the*~~  
15 ~~*sponsor elects to pay a sum or contribute land to one or more housing developers. If the Treasurer, or*~~  
16 ~~*the Planning Department notifies DBI within the five business days that the conditions of (1) through*~~  
17 ~~*(3) of this Subsection have not been met, DBI shall deny the site or building permits or certificates of*~~  
18 ~~*occupancy for the development project. Any failure of the Treasurer, DBI or the Planning Department*~~  
19 ~~*to give any notice under this Section shall not relieve a sponsor from compliance with this Section.*~~  
20 ~~*Where DBI inadvertently issues a site or building permit, or certificate of occupancy without complying*~~  
21 ~~*with the requirements of this section, the sponsor shall be deemed to have elected to pay the in-lieu fee*~~  
22 ~~*pursuant to Section 313.6 and shall immediately be liable for the amount of the fee plus accrued*~~  
23 ~~*interest in accordance with Section 313.9. In addition, DBI shall not issue any certificate of occupancy*~~  
24 ~~*for the project without notification from the Treasurer that the sponsor has paid the fee plus any*~~  
25 ~~*interest due. The procedure set forth in this Subsection is not intended to preclude enforcement of the*~~

1 ~~provisions of this section under any other section of this Code or other authority under the laws of the~~  
2 ~~State of California.~~

3 ~~(e) (f)~~ Where the sponsor elects to pay a sum or contribute land of value equivalent to  
4 the in-lieu fee to one or more housing developers, the sponsor's responsibility for completing  
5 construction of and maintaining the affordability of housing units constructed ceases from and  
6 after the date on which:

7 (1) The conditions of (1) through (3) of Subsection ~~(d) (e)~~ of this Section have been  
8 met; and

9 (2) A mechanism has been approved by the Director ~~of Planning~~ to enforce the  
10 requirement that the housing units constructed will be affordable to qualifying households  
11 continuously for 50 years.

12 ~~(g) If the project sponsor fails to comply with these requirements prior to issuance of the~~  
13 ~~first certificate of occupancy by DBI, it shall be deemed to have elected to pay the in-lieu fee under~~  
14 ~~Section 413.6 and the deferral surcharge in order to comply with Section 413.1 et seq. DBI shall deny~~  
15 ~~any and all certificates of occupancy for the development project until such payment has been made.~~  
16 ~~Where the sponsor initially elects to pay a sum and/or contribute land of value equivalent to the in-lieu~~  
17 ~~fee to one or more housing developers, but subsequently decides instead to pay the in-lieu fee, the~~  
18 ~~sponsor shall immediately be liable for the amount of the in-lieu fee under Section 313.6 and interest in~~  
19 ~~accordance with Section 313.9.~~

20 SEC. ~~413.6.~~ ~~313.6.~~ COMPLIANCE BY THROUGH PAYMENT OF IN-LIEU FEE.

21 (a) ~~Commencing on March 11, 1999, the amount of the fee which may be paid by the~~  
22 ~~sponsor of a development project subject to this ordinance in lieu of developing and providing the~~  
23 ~~housing required by Section 313.5 shall be determined by the following formulas for each type of space~~  
24 ~~proposed as part of the development project and subject to this ordinance.~~

1	<i>Net Addition Gross Sq. Ft. Entertainment Space—</i>	x	<i>\$10.57 = Total Fee—</i>
2			
3	<i>Net Addition Gross Sq. Ft. Hotel Space—</i>	x	<i>\$8.50 = Total Fee—</i>
4			
5	<i>Net Addition Gross Sq. Ft. Office Space—</i>	x	<i>\$11.34 = Total Fee—</i>
6			
7	<i>Net Addition Gross Sq. Ft. Research and Development—</i>	x	<i>\$7.55 = Total Fee—</i>
8			
9	<i>Net Addition Gross Sq. Ft. Retail Space—</i>	x	<i>\$10.57 = Total Fee—</i>
10			
11			

(b) (1) Commencing on January 1, 2002, the amount of the fee which may be paid by the sponsor of a development project subject to Section 413.1 et seq. this ordinance in lieu of developing and providing the housing required by Section 413.5 313.5 shall be determined by the following formulas for each type of space proposed as part of the development project and subject to Section 413.1 et seq. this ordinance:

18	Net Addition Gross Sq. Ft. Entertainment Space	x	\$13.95 = Total Fee
19			
20	Net Addition Gross Sq. Ft. Hotel Space	x	\$11.21 = Total Fee
21			
22	Net Addition Gross Sq. Ft. Office Space	x	\$14.96 = Total Fee
23			
24	Net Addition Gross Sq. Ft. R & D Space		\$9.97 = Total
25			

	x	Fee
Net Addition Gross Sq. Ft. Retail Space	x	\$13.95 = Total Fee

(2) Commencing on January 1, 2009, the amount of the fee which may be paid by the sponsor of a development project subject to Section 413.1 et seq. this ordinance in lieu of developing and providing the housing required by Section 413.5 313.5 shall be determined by the following formulas for each type of space proposed as part of the development project and subject to Section 413.1 et seq. this ordinance:

Net Addition Gross Sq. Ft. IPDR or S.E.W. Space	x	\$15.69 = Total Fee
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- (A) Integrated PDR or IPDR, is defined in Section 890.49 of the Planning this Code,
- (B) Small Enterprise Workspaces or S.E.W., is defined in Section 227(t) of the Planning this Code.

(b) (e) No later than July 1 of each year, the Mayor's Office of Housing MOH shall adjust the in-lieu fee payment option and provide a report on its adjustment to the Board of Supervisors. The Mayor's Office of Housing MOH shall provide notice of any fee adjustment on its website at least 30 days prior to the adjustment taking effect. The Mayor's Office of Housing MOH is authorized to develop an appropriate methodology for indexing the fee, based on adjustments in the costs of constructing housing and in the price of housing in San Francisco consistent with the indexing for the Residential Inclusionary Affordable Housing Program in lieu fee set out in Planning Code Section 415.6 315.6. The method of indexing shall be published in the Procedures Manual for the Residential Inclusionary Affordable Housing Program. In making a determination as to the amount of the fee to be paid, the Planning



1 Department shall credit to the sponsor any excess Interim Guideline credits or excess credits  
2 which the sponsor elects to apply against its housing requirement.

3 (c) Any in-lieu fee required under this Section is due and payable to the Development Fee  
4 Collection Unit at DBI prior to issuance of the first construction document, with an option for the  
5 project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing  
6 to pay a deferral surcharge that would be deposited into the Citywide Affordable Housing Fund in  
7 accordance with Section 107A.13.3 of the San Francisco Building Code.

8 ~~(d) — Prior to the issuance by DBI of the first site or building permit for a development project~~  
9 ~~subject to this ordinance, the sponsor must notify the Planning Department and MHO in writing that it~~  
10 ~~has either (i) satisfied the conditions of Section 313.5(e), (ii) paid in full the sum required by this~~  
11 ~~Section to the Treasurer, or (iii) satisfied the conditions of Section 328. If the sponsor fails by the~~  
12 ~~applicable date to demonstrate to the Planning Department that the sponsor has satisfied the~~  
13 ~~conditions of Section 313.5(e) or paid the applicable sum in full to the Treasurer, DBI shall deny any~~  
14 ~~and all site or building permits or certificates of occupancy for the development project until the~~  
15 ~~Treasurer notifies DBI and MOH that such payment has been made, and the Treasurer shall~~  
16 ~~immediately initiate lien proceedings against the sponsor's property pursuant to Section 313.9 to~~  
17 ~~recover the fee.~~

18 ~~(e) — Upon payment of the fee in full to the Treasurer and upon request of the sponsor, the~~  
19 ~~Treasurer shall issue a certification that the fee has been paid. The sponsor shall present such~~  
20 ~~certification to the Planning Department, DBI and MOH prior to the issuance by DBI of the first site or~~  
21 ~~building permit or certificate of occupancy for the development project. DBI shall not issue the site or~~  
22 ~~building permit or certificate of occupancy without proof of payment of the fee from the Treasurer. Any~~  
23 ~~failure of the Treasurer, DBI or the Planning Department to give any notice under this Section shall~~  
24 ~~not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues a site or~~  
25 ~~building permit without payment of the fee, DBI shall not issue any certificate of occupancy for the~~

1 ~~project without notification from the Treasurer that the fee required by this Section has been paid. The~~  
2 ~~procedure set forth in this Subsection is not intended to preclude enforcement of the provisions of this~~  
3 ~~Section pursuant to any other section of this Code, or other authority under the laws of the State of~~  
4 ~~California.~~

5 SEC. 413.7. INTEGRATED PDR EXCEPTION. An exception to this process exists for  
6 Integrated PDR projects that are subject to Section ~~428~~ 328 of ~~the Planning~~ this Code, for  
7 which only 50% of the fees must be paid before the issuance of the first construction document  
8 or final first certificate of occupancy with a deferral surcharge, whichever applies.

9 SEC. ~~413.8~~ 313.7. COMPLIANCE ~~THROUGH BY~~ COMBINATION OF PAYMENT TO  
10 HOUSING DEVELOPER AND PAYMENT OF IN-LIEU FEE.

11 The sponsor of a development project subject to Section 413.1 et seq. ~~this ordinance~~ may  
12 elect to satisfy its housing requirement by a combination of paying money or contributing land  
13 to one or more housing developers under Section 413.5 ~~313.5~~ and paying a partial amount of  
14 the in-lieu fee to ~~the Treasurer~~ the Development Fee Collection Unit at DBI under Section 413.6  
15 ~~313.6~~. In the case of such election, the sponsor must pay a sum such that each gross square  
16 foot of net addition of each type of space subject to Section 413.1 et seq. ~~this ordinance~~ is  
17 accounted for in either the payment of a sum or contribution of land to one or more housing  
18 developers or the payment of a fee to ~~the Treasurer~~ the Development Fee Collection Unit. The  
19 housing units constructed by a housing developer must conform to all requirements of Section  
20 413.1 et seq. ~~this ordinance~~, including, but not limited to, the proportion that must be affordable  
21 to qualifying households as set forth in Section 413.5 ~~313.5~~. All of the requirements of Sections  
22 413.5 ~~313.5~~ and 413.6 ~~313.6~~ shall apply, including the requirements with respect to the timing of  
23 issuance of site and building permits and certificates of occupancy for the development  
24 project and payment of the in-lieu fee.

25 ~~SEC. 313.8. TRANSFER OF HOUSING CREDITS.~~

1           (a) — *In determining whether a sponsor is in compliance with this ordinance, the Planning*  
2 *Department or the Commission shall credit against all or part of a housing requirement for any*  
3 *sponsor of any development project credits, which shall be denominated "excess Interim Guidelines*  
4 *credits," obtained by the sponsor which:*

5           (1) — *Have received final approval under the Interim Guidelines as of August 18, 1985, but*  
6 *which have not been applied to a development project because the development project has not been*  
7 *approved by the Planning Department or the Commission or which are in excess of those credits*  
8 *required to satisfy the housing requirement under the Interim Guidelines; or*

9           (2) — *Have received preliminary approval prior to August 18, 1985, received final approval*  
10 *within six months of August 18, 1985, and are in excess of those credits required to satisfy the housing*  
11 *requirement under the Interim Guidelines or this ordinance. This six-month period may be extended for*  
12 *a maximum of two six-month periods where, based upon evidence submitted by the sponsor, the*  
13 *Planning Department or Planning Commission determine within six months of August 18, 1985, or*  
14 *within a six-month extension, that (1) there is good cause for an extension or an additional extension,*  
15 *(2) the failure to obtain final approval of credits is beyond the sponsor's immediate control, and (3) the*  
16 *sponsor has made a reasonable effort to obtain final approval of credits.*

17           *Excess Interim Guideline credits may be applied against a sponsor's housing requirement under*  
18 *this ordinance on the basis of two and three tenths (2.3) excess Interim Guideline credits against one*  
19 *housing unit required to be provided under Section 313.5. Excess Interim Guideline Credits may be*  
20 *applied against a sponsor's housing requirement under this ordinance only for those projects obtaining*  
21 *project authorizations as defined in Planning Code Section 320(h) on or before February 28, 1999. No*  
22 *excess Interim Guideline Credits may be applied against a sponsor's housing requirement for any*  
23 *project authorization issued after that date. The Planning Department shall notify MOH of credits*  
24 *applied to the sponsor's housing requirement under this Section 313.8(a).*

1           (b) — ~~In making their determination as to whether a sponsor's housing development plan~~  
2 ~~complies with Sections 313.5, 313.6, and 313.7, the Planning Department or the Commission shall~~  
3 ~~credit to the sponsor any housing units constructed or in-lieu fee paid in excess of that required to~~  
4 ~~satisfy the housing unit requirement under this ordinance, which shall be denominated "excess credits."~~  
5 ~~The Planning Department or the Commission shall permit the transfer of any excess credits received~~  
6 ~~under this ordinance to be applied to satisfy all or part of a housing requirement for any other~~  
7 ~~development project that is subject to the provisions of this ordinance, and shall notify the MOH of~~  
8 ~~such permitted transfer. Each excess credit shall be equivalent to one housing unit as computed under~~  
9 ~~Section 313.5. Excess credits may be obtained only under Section 313.11 or if:~~

10           (1) — ~~They have been obtained after the commencement of construction of housing in~~  
11 ~~compliance with all of the requirements of Section 313.5, the payment of a sum or contribution of land~~  
12 ~~to one or more housing developers in compliance with all of the requirements of Section 313.5, or~~  
13 ~~payment of an in-lieu fee to the Treasurer in compliance with all of the requirements of Section 313.6~~  
14 ~~or a combination of the above under Section 313.7. Compliance with these sections requires~~  
15 ~~construction of the total number of housing units required, the percentage of such units which must be~~  
16 ~~affordable to qualifying households, and the establishment of a mechanism approved by the Planning~~  
17 ~~Department to enforce the requirement that the units constructed will be affordable for 50 years to~~  
18 ~~qualifying households; and~~

19           (2) — ~~The excess credits result from either:~~

20           (A) — ~~Abandonment of the development project that received approval by the Planning~~  
21 ~~Department or the Commission as evidenced by cancellation of the site or building permit or the site or~~  
22 ~~building permit application; or~~

23           (B) — ~~A decrease in the net addition of gross square feet of each type of space subject to this~~  
24 ~~ordinance as a result of Planning Department, Commission, Board of Appeals, Board of Supervisors,~~  
25 ~~or court action taken after:~~

1           (i) — ~~The amount of such net addition of gross square feet of each type of space subject to this~~  
2 ~~ordinance has been determined by the Planning Department or Commission under Section 313.4; and~~

3           (ii) — ~~The sponsor has paid a sum to one or more housing developers and construction of the~~  
4 ~~housing units has commenced under Section 313.5, or the sponsor has paid an in-lieu fee under Section~~  
5 ~~313.6, or a combination of the above under Section 313.7.~~

6           ~~Excess credits may be applied against a sponsor's housing requirement under this ordinance~~  
7 ~~only for those applications for a building or site permit filed within three years of the date on which the~~  
8 ~~excess credits are issued. The date on which such excess credits are issued shall be the earlier of the~~  
9 ~~sponsor's abandonment of the development project under which the credits were obtained as evidenced~~  
10 ~~by the cancellation of the site or building permit or the site or building permit application, the~~  
11 ~~commencement of construction of each of the housing units under Section 313.5, or the payment of the~~  
12 ~~in-lieu fee under Section 313.6 with respect to such credits. No excess credits may be applied against a~~  
13 ~~sponsor's housing requirement for any application for a building or site permit filed after that date.~~

14           (c) — ~~If the number of excess credits or excess Interim Guidelines credits held by a sponsor is~~  
15 ~~not sufficient to satisfy the entire housing requirement of that sponsor's development project subject to~~  
16 ~~the provisions of this ordinance, including, but not limited to the requirement that a percentage of the~~  
17 ~~housing units must be affordable to qualifying households, then the balance of the housing requirement~~  
18 ~~shall be satisfied in accordance with the provisions of this ordinance, including the requirement set~~  
19 ~~forth in Section 313.5 that the units constructed must be affordable to qualifying households.~~

20           (d) — ~~Excess credits and excess Interim Guideline credits may be transferred from one~~  
21 ~~sponsor to another only if:~~

22           (1) — ~~The Planning Department has been notified in writing of the proposed transfer of the~~  
23 ~~credits;~~

24           (2) — ~~The Planning Department has determined that the transfer or sponsor has obtained the~~  
25 ~~credits through meeting the requirements of either Subsection (a) or (b) of this Section; and~~

1           (3) ~~— The transfer is made in writing, a true copy of which is provided to the Planning~~  
2 ~~Department.~~

3           (e) ~~— The City makes no warranties that any excess credits or excess Interim Guidelines~~  
4 ~~credits will be marketable during the period in which this ordinance is in effect or thereafter. The City~~  
5 ~~makes no warranties that an applicant possessing excess credits or excess Interim Guidelines credits is~~  
6 ~~entitled to Commission approval of a development project subject to this ordinance~~

7           SEC. ~~413.9.~~ ~~313.9.~~ LIEN PROCEEDINGS.

8           (a) A project sponsor's failure to comply with the requirements of Sections 413.5,  
9 413.6 ~~313.5, 313.6~~ and 413.7 ~~313.7~~ shall ~~constitute~~ be cause for the City Development Fee  
10 Collection Unit at DBI to record a institute lien proceedings to make the in-lieu fee, as adjusted under  
11 Section 413.6, plus interest and any deferral surcharge, a lien against all parcels used for the  
12 development project under this ordinance, as adjusted under Section 313.6 in accordance with  
13 Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code. ~~The fee~~  
14 ~~required by this ordinance is due and payable to the Treasurer prior to issuance of the first building or~~  
15 ~~site permit for the development project. If, for any reason, the fee remains unpaid following issuance of~~  
16 ~~the permit, any amount due shall accrue interest at the rate of one and one-half percent per month, or~~  
17 ~~fraction thereof, from the date of issuance of the permit until the date of final payment.~~

18           (b) ~~— If, for any reason, the fee imposed pursuant to this ordinance remains unpaid following~~  
19 ~~issuance of the permit, the Treasurer shall initiate proceedings in accordance with Article XX of~~  
20 ~~Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the fee,~~  
21 ~~including interest, a lien against all parcels used for the development project and shall send all notices~~  
22 ~~required by that Article to the owner of the property as well as the sponsor. The Treasurer shall also~~  
23 ~~prepare a preliminary report notifying the sponsor of a hearing to confirm such report by the Board of~~  
24 ~~Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall contain the~~  
25 ~~sponsor's name, a description of the sponsor's development project, a description of the parcels of real~~

1 ~~property to be encumbered as set forth in the Assessor's Map Books for the current year, a description~~  
2 ~~of the alleged violation of this ordinance, and shall fix a time, date, and place for hearing. The~~  
3 ~~Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the parcels of~~  
4 ~~real property subject to lien. Except for the release of lien recording fee authorize by Administrative~~  
5 ~~Code Section 10.237, all sums collected by the Tax Collector pursuant to this ordinance shall be held in~~  
6 ~~trust by the Treasurer and deposited in the Citywide Affordable Housing Fund established in Section~~  
7 ~~313.12.~~

8 ~~(c) — Any notice required to be given to a sponsor or owner shall be sufficiently given or~~  
9 ~~served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or~~  
10 ~~owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor~~  
11 ~~or owner at the official address of the sponsor or owner maintained by the Tax Collector for the~~  
12 ~~mailing of tax bills or, if no such address is available, to the sponsor at the address of the development~~  
13 ~~project, and to the applicant for the site or building permit at the address on the permit application.~~

14 ~~SEC. 313.10. IN-LIEU FEE REFUND WHEN BUILDING PERMIT EXPIRES PRIOR TO~~  
15 ~~COMPLETION OF WORK AND COMMENCEMENT OF OCCUPANCY.~~

16 ~~In the event a building permit expires prior to completion of the work on and commencement of~~  
17 ~~occupancy of a development project so that it will be necessary to obtain a new permit to carry out any~~  
18 ~~development, the obligation to comply with this ordinance shall be cancelled, and any in-lieu fee~~  
19 ~~previously paid to the Treasurer shall be refunded. If and when the sponsor applies for a new permit,~~  
20 ~~the procedures set forth in this ordinance regarding construction of housing or payment of the in-lieu~~  
21 ~~fee shall be followed.~~

22 ~~SEC. 313.11. ONE-TIME FEE PAYMENT.~~

23 ~~In the event that a development project for which housing units have been constructed or an in-~~  
24 ~~lieu fee has been fully paid is demolished or converted to a use or uses not subject to this ordinance~~  
25 ~~prior to the expiration of its estimated useful life, the City shall either grant to the sponsor excess~~

1 ~~credits transferable under Section 313.8 for a portion of any housing units actually constructed and for~~  
2 ~~which a certificate of occupancy has been issued, or refund to the sponsor a portion of the amount of~~  
3 ~~an in-lieu fee paid. The portion of excess credits granted or the fee refunded shall be determined on a~~  
4 ~~pro-rata basis according to the ratio of the remaining useful life of the project at the time of demolition~~  
5 ~~or conversion in relation to its total useful life. For purposes of this ordinance, the useful life of a~~  
6 ~~development project shall be 50 years.~~

7 SEC. ~~413.10.~~ 413.12. CITYWIDE AFFORDABLE HOUSING FUND. All monies  
8 contributed pursuant to Sections ~~413.6~~ 413.6 or ~~413.8~~ 413.7 or assessed pursuant to Section  
9 ~~413.9~~ 413.9 shall be deposited in the special fund maintained by the Controller called the  
10 Citywide Affordable Housing Fund ("Fund"). The receipts in the Fund are hereby appropriated  
11 in accordance with law to be used solely to increase the supply of housing affordable to  
12 qualifying households subject to the conditions of this Section. The Fund shall be  
13 administered and expended by the Director of ~~MOH the Mayor's Office of Housing~~, who shall  
14 have the authority to prescribe rules and regulations governing the Fund which are consistent  
15 with ~~Section 413.1 et seq. this ordinance.~~ No portion of the Fund may be used, by way of loan or  
16 otherwise, to pay any administrative, general overhead, or similar expense of any entity, ~~except~~  
17 ~~that \$10,000 from the Fund shall be allocated by the Director within six months following the effective~~  
18 ~~date of this ordinance to pay consultants for conducting research necessary to support the "Jobs~~  
19 ~~Housing Nexus Analysis," prepared by Keyser Marston Associates, Inc., and dated June 1997.~~

20 SEC. ~~413.11~~ 413.13. DIRECTOR OF PLANNING'S EVALUATION.

21 ~~Within 18 months following the effective date of this ordinance, the Director of Planning shall~~  
22 ~~report to the Commission, the Board of Supervisors, and the Mayor on the current supply and demand~~  
23 ~~of affordable housing in the City, the status of compliance with this ordinance and the efficacy of this~~  
24 ~~ordinance in mitigating the City's shortage of affordable housing available to employees working in~~  
25 ~~development projects subject to this ordinance. Thereafter, i~~ If in the discretion of the Director of



1 Planning there has been a substantial change in the San Francisco and/or regional  
2 economies since the effective date of the requirements of Section 413.1 et seq. this ordinance, the  
3 Director *of Planning* may recommend to the Commission, the Board of Supervisors, and the  
4 Mayor that Section 413.1 et seq. this ordinance be amended or rescinded to alleviate any undue  
5 burden on commercial development in the City that Section 413.1 et seq. this ordinance may  
6 impose.

7 ~~SEC. 313.14. PARTIAL INVALIDITY AND SEVERABILITY.~~

8 ~~If any provision of this ordinance, or its application to any development project or to any~~  
9 ~~geographical area of the City, is held invalid, the remainder of the ordinance, or the application of~~  
10 ~~such provision to other development projects or to any other geographical areas of the City, shall not~~  
11 ~~be affected thereby.~~

12 ~~SEC. 313.15. STUDY.~~

13 ~~No later than July 1, 2001, and every five years thereafter, the Director of Planning shall~~  
14 ~~complete a study to determine the demand for housing created by various types of commercial~~  
15 ~~development in San Francisco and, based on the study, recommend to the Board of Supervisors~~  
16 ~~changes in the requirements for housing construction and in lieu fees imposed on commercial~~  
17 ~~development in this ordinance if necessary to help meet that demand.~~

18 SEC. 414 (formerly Section 314). CHILD-CARE REQUIREMENTS FOR OFFICE AND  
19 HOTEL DEVELOPMENT PROJECTS.

20 Sections 414.1 through 414.15 (hereafter referred to as Section 414.1 et seq.) set forth the Child  
21 Care requirements for Office and Hotel Development Projects. The effective date of these requirements  
22 shall be either September 6, 1985, which is the date that the requirements originally became effective,  
23 or the date a subsequent modification, if any, became effective. When the words "this Section" appear  
24 in Sections 314.1 through 314.8, they shall be construed to mean "Sections 314.1 through 314.8."

1 SEC. ~~414.1. 314.1.~~ SEC. ~~414.2 314.2.~~ FINDINGS. The Board hereby finds and declares  
2 as follows:

3 A. Large-scale office and hotel developments in the City ~~and County of San Francisco~~  
4 (~~hereinafter "City"~~) have attracted and continue to attract additional employees to the City, and  
5 there is a causal connection between such developments and the need for additional child-  
6 care facilities in the City, particularly child-care facilities affordable to households of low and  
7 moderate income.

8 B. Office and hotel uses in the City are benefitted by the availability of child care for  
9 persons employed in such offices and hotels close to their place of employment. However, the  
10 supply of child care in the City has not kept pace with the demand for child care created by  
11 these new employees. Due to this shortage of child care, employers will have difficulty in  
12 securing a labor force, and employees unable to find accessible and affordable quality child  
13 care will be forced either to work where such services are available outside of San Francisco,  
14 or leave the work force entirely, in some cases seeking public assistance to support their  
15 children. In either case, there will be a detrimental effect on San Francisco's economy and its  
16 quality of life.

17 C. Projections from the EIR for the Downtown Plan indicate that between 1984 and  
18 2000 there will be a significant increase of nearly 100,000 jobs in the C-3 District under the  
19 Downtown Plan. Most of that employment growth will occur in office and hotel work, which  
20 consist of a predominantly female work force.

21 D. According to the survey conducted of C-3 District workers in 1981, 65 percent of  
22 the work force was between the ages of 25-44. These are the prime childbearing years for  
23 women, and the prime fathering years for men. The survey also indicated that only 12 percent  
24 of the C-3 District jobs were part-time, leaving up to 88 percent of the positions occupied by  
25 full-time workers. All of these factors point to the inevitable increase in the number of working

1 parents in the C-3 District and the concomitant increase in need for accessible, quality child-  
2 care.

3 E. Presently, there exists a scarcity of child care in the C-3 District and citywide for  
4 all income groups, but the scarcity is more acutely felt by households of low and moderate  
5 income. Hearings held on April 25, 1985 before the Human Services Committee of the San  
6 Francisco Board of Supervisors documented the scarcity of child care available in the C-3  
7 District, the impediments to child-care program startup and expansion, the increase in the  
8 numbers of children needing care, and the acute shortage of supply throughout the Bay Area.  
9 The Board of Supervisors also takes legislative notice of the existing and projected shortage  
10 of child-care services in the City as documented by the Child-Care Information Kit prepared by  
11 the California Child-Care Resources and Referral Network located in San Francisco.

12 F. The scarcity of child care in the City is due in great part to large office and hotel  
13 development, both within the C-3 District and elsewhere in the City, which has attracted and  
14 will continue to attract additional employees and residents to the City. Some of the employees  
15 attracted to large office and hotel developments are competing with present residents for the  
16 few openings in child-care programs available in the City. Competition for child care generates  
17 the greatest pressure on households of low and moderate income. At the same time that large  
18 office and hotel development is generating an increased demand for child care, it is  
19 improbable that factors inhibiting increased supply of child care will be mitigated by the  
20 marketplace; hence, the supply of child care will become increasingly scarce.

21 G. The ~~Master~~ San Francisco General Plan encourages "continued growth of prime  
22 downtown office activities so long as undesirable consequences of such growth can be  
23 avoided" and requires that there be the provision of "adequate amenities for those who live,  
24 work and use downtown." In light of these provisions, the City should impose requirements on  
25 developers of office and hotel projects designed to mitigate the adverse effects of the

1 expanded employment facilitated by such projects. To that end, the ~~City Planning~~ Commission  
2 is authorized to promote affirmatively the policies of the ~~San Francisco Master~~ General Plan  
3 through the imposition of special child-care development or assessment requirements. It is  
4 desirable to impose the costs of the increased burden of providing child care necessitated by  
5 such office and hotel development projects directly upon the sponsors of new development  
6 generating the need. This is to be done through a requirement that the sponsor construct  
7 child-care facilities or pay a fee into a fund used to foster the expansion of and to ease access  
8 to affordable child care as a condition of the privilege of development.

9 SEC. 414.2. ~~314.1~~ DEFINITIONS. See Section 401 of this Article. ~~The following definitions~~  
10 ~~shall govern interpretation of this Section.~~

11 (a) ~~—"Child care facility" shall mean a child day care facility as defined in California Health~~  
12 ~~and Safety Code Section 1596.750.~~

13 (b) ~~—"Child care provider" shall mean a provider as defined in California Health and Safety~~  
14 ~~Code Section 1596.791.~~

15 (c) ~~—"Commission" shall mean the City Planning Commission.~~

16 (d) ~~—"DBI" shall mean the Department of Building Inspection.~~

17 (e) ~~—"Department" shall mean the Department of City Planning.~~

18 (f) ~~—"First certificate of occupancy" shall mean either a temporary certificate of occupancy~~  
19 ~~or a Certificate of Final Completion and Occupancy, as defined in San Francisco Building Code~~  
20 ~~Section 109, whichever is issued first.~~

21 (g) ~~—"Hotel" shall mean a building containing six or more guest rooms as defined in San~~  
22 ~~Francisco Housing Code Section 401 intended or designed to be used, or which are used, rented, or~~  
23 ~~hired out to be occupied, or which are occupied for sleeping purposes and dwelling purposes by guests,~~  
24 ~~whether rent is paid in money, goods, or services, including motels as defined in San Francisco~~  
25 ~~Housing Code Section 401.~~

1           (h) ~~—"Hotel use" shall mean space within a structure or portion thereof intended or primarily~~  
2 ~~suitable for the operation of a hotel, including all office and other uses accessory to the renting of guest~~  
3 ~~rooms, but excluding retail uses and office uses not accessory to the hotel use.~~

4           (i) ~~—"Household of low income" shall mean a household composed of one or more persons~~  
5 ~~with a combined annual net income for all adult members which does not exceed the qualifying limit for~~  
6 ~~a lower income family of a size equivalent to the number of persons residing in such household, as set~~  
7 ~~forth for the County of San Francisco in California Administrative Code Section 6932.~~

8           (j) ~~—"Household of moderate income" shall mean a household composed of one or more~~  
9 ~~persons with a combined annual net income for all adult members which does not exceed the qualifying~~  
10 ~~limit for a median income family of a size equivalent to the number of persons residing in such~~  
11 ~~household, as set forth for the County of San Francisco in California Administrative Code Section~~  
12 ~~6932.~~

13           (k) ~~—"Licensed child care facility" shall mean a child care facility which has been issued a~~  
14 ~~valid license by the California Department of Social Services pursuant to California Health and Safety~~  
15 ~~Code Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.~~

16           (l) ~~—"Net addition of gross square feet of hotel space" gross floor area as defined in~~  
17 ~~Planning Code Section 102.9 to be occupied by, or primarily serving, hotel use, less the gross floor~~  
18 ~~area in any structure demolished or rehabilitated as part of the proposed hotel development project~~  
19 ~~space used primarily and continuously for office or hotel use and not accessory to any use other than~~  
20 ~~office or hotel use for five years prior to Planning Commission approval of the hotel development~~  
21 ~~project subject to this Section or for the life of the structure demolished or rehabilitated, whichever is~~  
22 ~~shorter.~~

23           (m) ~~—"Net addition of gross square feet of office space" shall mean gross floor area as defined~~  
24 ~~in Planning Code Section 102.9 to be occupied by, or primarily serving, office use, less the gross floor~~  
25 ~~area in any structure demolished or rehabilitated as part of the proposed office development project~~

1 ~~space used primarily and continuously for office or hotel use and not accessory to any use other than~~  
2 ~~office or hotel use for five years prior to Planning Commission approval of the office development~~  
3 ~~project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is~~  
4 ~~shorter.~~

5 (n) ~~—"Nonprofit child care provider" shall mean a child care provider that is an organization~~  
6 ~~organized and operated for nonprofit purposes within the provisions of California Revenue and~~  
7 ~~Taxation Code Sections 23701–23710, inclusive, as demonstrated by a written determination from the~~  
8 ~~California Franchise Tax Board exempting the organization from taxes under Revenue and Taxation~~  
9 ~~Code Section 23701.~~

10 (o) ~~—"Nonprofit organization" shall mean an organization organized and operated for~~  
11 ~~nonprofit purposes within the provisions of California Revenue and Taxation Code Sections 23701–~~  
12 ~~23710, inclusive, as demonstrated by a written determination from the California Franchise Tax Board~~  
13 ~~exempting the organization from taxes under Revenue and Taxation Code Section 23701.~~

14 (p) ~~—"Office development project" shall mean any new construction, addition, extension,~~  
15 ~~conversion or enlargement, or combination thereof, of an existing structure which includes any gross~~  
16 ~~square feet of office space.~~

17 (q) ~~—"Office use" shall mean space within a structure or portion thereof intended or~~  
18 ~~primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or~~  
19 ~~provide to others at that location services including, but not limited to, the following: Professional,~~  
20 ~~banking, insurance, management, consulting, technical, sales and design, or the office functions of~~  
21 ~~manufacturing and warehousing businesses, but excluding retail uses; repair; any business~~  
22 ~~characterized by the physical transfer of tangible goods to customers on the premises; wholesale~~  
23 ~~shipping, receiving and storage; design showcases or any other space intended and primarily suitable~~  
24 ~~for display of goods; and child care facilities. This definition shall include all uses encompassed within~~  
25 ~~the meaning of Planning Code Section 219.~~

1           (r) ~~—"Retail use" shall mean space within any structure or portion thereof intended or~~  
2 ~~primarily suitable for occupancy by persons or entities which supply commodities to customers on the~~  
3 ~~premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking businesses,~~  
4 ~~and the uses defined in Planning Code Sections 218 and 220 through 225, and also including all space~~  
5 ~~accessory to such retail use.~~

6           (s) ~~—"Sponsor" shall mean an applicant seeking approval for construction of an office or~~  
7 ~~hotel development project subject to this Section and such applicant's successors and assigns.~~

8           SEC. ~~414.3.~~ 314.3. APPLICATION.

9           (a) ~~This~~ Section 414.1 et seq. shall apply to office and hotel development projects  
10 proposing the net addition of 50,000 or more gross square feet of office or hotel space.

11           (b) ~~This~~ Section 414.1 et seq. shall not apply to:

12           (1) Any development project other than an office or hotel development project,  
13 including that portion of an office or hotel development project consisting of a retail use;

14           (2) That portion of an office or hotel development project located on property owned  
15 by the United States or any of its agencies;

16           (3) That portion of an office or hotel development project located on property owned  
17 by the State of California or any of its agencies, with the exception of such property not used  
18 exclusively for a governmental purpose;

19           (4) That portion of an office or hotel development project located on property under  
20 the jurisdiction of the Port of San Francisco or the San Francisco Redevelopment Agency  
21 where the application of this Section is prohibited by State or local law; and

22           (5) Any office or hotel development project approved by the *Planning* Commission  
23 prior to the effective date of ~~this~~ Section 414.1 et seq.

24           SEC. ~~414.4.~~ 314.4. IMPOSITION OF CHILD CARE REQUIREMENT.

1           (a) Determination of Requirements. ~~(1)~~ The Department ~~or the Commission~~ shall  
2 determine the applicability of Section 414.1 et seq. to any development project requiring a building or  
3 site permit and, if Section 414.1 is applicable, the number of gross square feet of each type of space  
4 subject to its requirements, and shall impose these requirements as a condition~~s~~ of ~~on the~~ approval  
5 for issuance of the building or site permit applications for office or hotel the development projects  
6 covered by this Section in order to mitigate the impact on the availability of child-care facilities  
7 which will be caused by the employees attracted to the proposed development project. ~~The~~  
8 ~~conditions shall require that the sponsor construct or provide a child-care facility on or near the site of~~  
9 ~~the development project, either singly or in conjunction with the sponsors of other office or hotel~~  
10 ~~development projects, or arrange with a nonprofit organization to provide a child-care facility at a~~  
11 ~~location within the City, or pay an in-lieu fee to the City Treasurer which shall thereafter be used~~  
12 ~~exclusively to foster the expansion of and ease access to child-care facilities affordable to households~~  
13 ~~of low or moderate income. The project sponsor shall supply any information necessary to assist the~~  
14 Department in this determination.

15           (b) Notice to Development Fee Collection Unit of Requirements. After the Department has  
16 made its final determination of the net addition of gross square feet of each type of space subject to  
17 Section 414.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its  
18 determination in addition to the other information required by Section 402(b) of this Article.

19           (c) Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site permit  
20 for a development project subject to the requirements of Section 414.1 et seq., the sponsor shall elect  
21 one of the six options listed below to fulfill any requirements imposed as a condition of approval and  
22 notify the Department of their choice of the following:

23           (1) Provide a child-care facility on the premises of the development project for the life of the  
24 project pursuant to Section 414.5; or



1           (2) In conjunction with the sponsors or one or more other development projects subject to  
2 Section 414.1 et seq. located within 1/2 mile of one another, provide a single child-care facility on the  
3 premises of one of their development projects for the life of the project as set forth in Section 414.6 ; or

4           (3) Either singly or in conjunction with the sponsors or one or more other development  
5 projects subject to Section 414.1 et seq. located within 1/2 mile of one another, provide a single child-  
6 care facility to be located within one mile of the development project(s) pursuant to Section 414.7 ; or

7           (4) Pay an in-lieu fee to the Development Fee Collection Unit at DBI pursuant to Section  
8 414.8; or

9           (5) Combine payment of an in-lieu fee to the Child Care Capital Fund with construction of a  
10 child-care facility on the premises or providing child-care facilities near the premises, either singly or  
11 in conjunction with other sponsors pursuant to Section 414.9 ; or

12           (6) Enter into an arrangement pursuant to which a nonprofit organization shall provide a  
13 child-care facility at a site within the City pursuant to Section 414.10 .

14           ~~(2) Prior to either the Department's or the Commission's approval of a building or site~~  
15 ~~permit for a development project subject to this Section , the Department shall issue a notice complying~~  
16 ~~with Planning Code Section 306.3 , setting forth its initial determination of the net addition of gross~~  
17 ~~square feet of office or hotel space subject to this Section.~~

18           ~~(3) Any person may appeal the initial determination by delivering an appeal in writing to~~  
19 ~~the Department within 15 days of such notice. If the initial determination is not appealed within the~~  
20 ~~time allotted, the initial determination shall become a final determination. If the initial determination is~~  
21 ~~appealed, the Commission shall schedule a public hearing prior to the approval of the development~~  
22 ~~project by the Commission or the Department to determine the net addition of gross square feet of~~  
23 ~~office or hotel space subject to this. The public hearing may be scheduled separately or simultaneously~~  
24 ~~with a hearing under City Planning Code Sections 139, 306.2, 309(h), 313.4, 315.3 or a Discretionary~~  
25

1 ~~Review hearing under San Francisco Business and Tax Regulations Code Section 26. The Commission~~  
2 ~~shall make a final determination of the net addition of gross square feet at the hearing.~~

3 (4) ~~— The final determination of the net addition of gross square feet of office or hotel space~~  
4 ~~subject to Section shall be set forth in the conditions of approval relating to the child care requirement~~  
5 ~~in any building or site permit application approved by the Department or the Commission. The~~  
6 ~~Department shall notify the Treasurer of the final determination of the net addition of gross square feet~~  
7 ~~of office or hotel space subject to this ordinance within 30 days of the date of the final determination.~~  
8 ~~The Department shall notify the Treasurer that the development project is subject to Section prior to~~  
9 ~~the time the Department or the Commission approves the permit application.~~

10 (d) Department Notice to Development Fee Collection Unit of Sponsor's Choice. After the  
11 project sponsor has notified the Department of their choice to fulfill the requirements of Section 414.1  
12 et seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the  
13 sponsor's choice.

14 (e) Development Fee Collection Unit Notice to Department Prior to Issuance of the First  
15 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing  
16 or electronically to the Department prior to issuing the first certificate of occupancy for any  
17 development project subject to Section 414.1 et seq. that has elected to fulfill all or part of its  
18 requirement with an option other than payment of an in-lieu fee. If the Department notifies the Unit at  
19 such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and  
20 all certificates of occupancy until the subject project is brought into compliance with the requirements  
21 of Section 414.1 et seq.

22 (f) Process for Revisions of Determination of Requirements. In the event that the  
23 Department or Commission takes action affecting any development project subject to Section 414.1 et  
24 seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of  
25

1 Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article  
2 shall be followed.

3 ~~(b)(1)~~ SEC. 414.5. COMPLIANCE BY PROVIDING AN ON-SITE CHILD-CARE FACILITY.

4 The sponsor of ~~any~~ a development to ~~this~~ Section 414.1 et seq. may elect to provide a child-  
5 care facility on the premises of the development project for the life of the project to meet the  
6 requirements of ~~this~~ Section 414.1 et seq. The sponsor shall, prior to the issuance of the first  
7 certificate of occupancy by DBI for the development project, provide proof to ~~the Treasurer and~~  
8 the Department that:

9 (A) A space on the premises of the development project has been provided to a  
10 nonprofit child-care provider without charge for rent, utilities, property taxes, building services,  
11 repairs, or any other charges of any nature, as evidenced by a lease and an operating  
12 agreement between the sponsor and the provider with minimum terms of three years;

13 (B) The child-care facility is a licensed child-care facility;

14 (C) The child-care facility has a minimum gross floor area of 3,000 square feet or an  
15 area determined according to the following formula, whichever is greater:

16 Net add. gross sq. ft. off. or hotel	×	sq. ft. of child-care
17 space	.01 =	facility

18 In the event that the net addition of gross square feet of office or hotel of the  
19 development project is less than 300,000 square feet, the child-care facility may have a  
20 minimum gross floor area of 2,000 square feet or the area determined according to the above  
21 formula, whichever is greater; and

22 (D) A notice of special restriction has been recorded stating that the development  
23 project is subject to ~~this~~ Section 414.1 et seq. and is in compliance herewith by providing a child-  
24 care facility on the premises.

1            ~~(2)~~ SEC. 414.6. COMPLIANCE IN CONJUNCTION WITH THE SPONSORS OF OTHER  
 2 DEVELOPMENT PROJECTS TO PROVIDE AN ON-SITE CHILD-CARE FACILITY AT ONE OF THE  
 3 PROJECTS. The sponsor of a development project subject to ~~this~~ Section 414.1 et seq. in  
 4 conjunction with the sponsors of one or more other development projects subject to ~~this~~  
 5 Section 414.1 et seq. located within 1/2 mile of one another may elect to provide a single child-  
 6 care facility on the premises of one of their development projects for the life of the project to  
 7 meet the requirements of ~~this~~ Section 414.1 et seq. The sponsors shall, prior to the issuance of  
 8 the first certificate of occupancy by DBI for any one of the development projects complying  
 9 with this part, provide proof to ~~the Treasurer and~~ the *Planning* Department that:

10            (A) A space on the premises of one of their development projects has been  
 11 provided to a nonprofit child-care provider without charge for rent, utilities, property taxes,  
 12 building services, repairs, or any other charges of any nature, as evidenced by a lease and an  
 13 operating agreement between the sponsor in whose project the facility will be located and the  
 14 provider with minimum terms of three years;

15            (B) The child-care facility is a licensed child-care facility;

16            (C) The child-care facility has a minimum gross floor area of 3,000 square feet or an  
 17 area determined according to the following formula, whichever is greater:

Combined net add. gross sq. ft. office or hotel space of all participating dev. projects	× .01 =	sq. ft. of child-care facility
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21            In the event that the net addition of gross square feet of office or hotel space of all  
 22 participating projects is less than 300,000 square feet, the child-care facility may have a  
 23 minimum gross floor area of 2,000 square feet or the area determined according to the above  
 24 formula, whichever is greater; and

1 (D) A written agreement binding each of the participating project sponsors  
2 guaranteeing that the child-care facility will be provided for the life of the development project  
3 in which it is located, or for as long as there is a demonstrated demand, as determined under  
4 ~~Subsection (h) of this~~ Section 414.12 ~~314.4~~, has been executed and recorded in the chain of title  
5 of each participating building.

6 ~~(3)~~SEC. 414.7. COMPLIANCE IN CONJUNCTION WITH THE SPONSORS OF OTHER  
7 DEVELOPMENT PROJECTS TO PROVIDE A CHILD-CARE FACILITY WITHIN ONE MILE OF  
8 THE DEVELOPMENT PROJECTS . The sponsor of a development project subject to ~~this~~  
9 Section 414.1 et seq., either singly or in conjunction with the sponsors of one or more other  
10 development projects subject to ~~this~~ Section 414.1 et seq. located within 1/2 mile of one  
11 another, may elect to provide a single child-care facility to be located within one mile of the  
12 development project(s) to meet the requirements of ~~this~~ Section 414.1 et seq. Subject to the  
13 discretion of the Department, the child-care facility shall be located so that it is reasonably  
14 accessible to public transportation or transportation provided by the sponsor(s). The  
15 sponsor(s) shall, prior to the issuance of the first certificate of occupancy by DBI for any  
16 development project complying with this part, provide proof to ~~the Treasurer and the Planning~~  
17 Department that:

18 (A) A space has been provided to a nonprofit child-care provider without charge for  
19 rent, utilities, property taxes, building services, repairs, or any other charges of any nature, as  
20 evidenced by a lease or sublease and an operating agreement between the sponsor(s) and  
21 the provider with minimum terms of three years;

22 (B) The child-care facility is a licensed child-care facility;

23 (C) The child-care facility has a minimum gross floor area of 3,000 square feet or an  
24 area determined according to the following formula, whichever is greater:

25

Combined net add. gross sq. ft. office or hotel		sq. ft. of
---	--	------------

space of all participating dev. projects	.01 =	child-care facility
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In the event that the net addition of gross square feet of office or hotel space of all participating projects is less than 300,000 square feet, the child-care facility may have a minimum gross floor area of 2,000 square feet or the area determined according to the above formula, whichever is greater; and

(D) A written agreement binding each of the participating project sponsors, with a term of 20 years from the date of issuance of the first certificate of occupancy for any development project complying with this part, guaranteeing that a child-care facility will be leased or subleased to one or more nonprofit child-care providers for as long as there is a demonstrated demand under ~~Subsection (h) of this~~ Section ~~414.12~~ 314.4 has been executed and recorded in the chain of title of each participating building.

~~(4)~~ SEC. 414.8. COMPLIANCE BY PAYMENT OF AN IN-LIEU FEE. (a) The sponsor of a development project subject to ~~this~~ Section 414.1 et seq. may elect to pay a fee in lieu of providing a child-care facility. The fee shall be computed as follows:

Net add. gross sq. ft. office or hotel space	× \$1.00 = Total Fee
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~~Upon payment of the fee in full to the Treasurer and upon request of the sponsor, the Treasurer shall issue a certification that the fee has been paid. The sponsor shall present such certification to the Department prior to the issuance by DBI of the first certificate of occupancy for the development project.~~

(b) The in-lieu fee is due and payable to the Development Fee Collection Unit at DBI prior to issuance of the first construction document with an option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge that would be deposited into the Child Care Capital Fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

1            ~~(5)~~ SEC. 414.9. COMPLIANCE BY COMBINING PAYMENT OF AN IN-LIEU FEE WITH  
2            CONSTRUCTION OF A CHILD-CARE FACILITY. The sponsor of a development project subject  
3            to ~~this~~ Section 414.1 et seq. may elect to satisfy its child-care requirement by combining  
4            payment of an in-lieu fee to the Child Care Capital Fund with construction of a child-care  
5            facility on the premises or providing child-care facilities near the premises, either singly or in  
6            conjunction with other sponsors. The child-care facility to be constructed on-site or provided  
7            near-site under this election shall be subject to all of the requirements of whichever of ~~Parts~~  
8            Sections 414.5, 414.6 and 414.7 (b)(1), (2) and (3) of this Section 314.4 is applicable, and shall have  
9            a minimum floor area of 3,000 gross square feet. If the net addition of gross square feet of  
10           office or hotel space of all participating projects is less than 300,000 square feet, the minimum  
11           gross floor area of the facility shall be 2,000 square feet. The in-lieu fee to be paid under this  
12           election shall be subject to all of the requirements of ~~Part (b)(4) of this~~ Section 414.8 314.4 and  
13           shall be determined by the Commission according to the following formula:

14	Net								
15	. add.	Net. add. gross sq.		Sq. ft.					Total
16	gross sq	ft. space subject		child-					Fee for
17	ft. space -	project Net. add.		care	100	\$1.00	×		Subject
18	subject	gross sq. ft. space	×	facility					Project
19	project	all participating							
20		projects							

21            ~~(6)~~ SEC. 414.10. COMPLIANCE BY ENTERING INTO AN ARRANGEMENT WITH A NON-  
22            PROFIT ORGANIZATION. The sponsor of a development project subject to this Section may  
23            elect to satisfy its child-care requirement by entering into an arrangement pursuant to which a  
24            nonprofit organization will provide a child-care facility at a site within the City. The sponsor  
25            shall, prior to the issuance of the first certificate of occupancy by the Director of DBI the

1 ~~Department of Building Inspection~~ for the development project, provide proof to the Director of  
2 Planning that:

3 (a) ~~(A)~~ A space for a child-care facility has been provided by the nonprofit organization,  
4 either for its own use if the organization will provide child-care services, or to a nonprofit child-  
5 care provider without charge for rent, utilities, property taxes, building services, repairs, or any  
6 other charges of any nature, as evidenced by a lease or sublease and an operating  
7 agreement between the nonprofit organization and the provider with minimum terms of three  
8 years;

9 (b) ~~(B)~~ The child-care facility is a licensed child-care facility;

10 (c) ~~(C)~~ The child-care facility has a minimum gross floor area of 3,000 square feet or an  
11 area determined according to the following formula, whichever is greater:

Net add. gross sq. ft. office or hotel space	× .01 =	sq. ft. of child-care facility
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14 In the event that the net addition of gross square feet of office or hotel space is less  
15 than 300,000 square feet, the child-care facility may have a minimum gross floor of 2,000  
16 square feet or the area determined according to the above formula, whichever is greater;

17 (d) ~~(D)~~ The nonprofit organization has executed and recorded a binding written  
18 agreement, with a term of 20 years from the date of issuance of the first certificate of  
19 occupancy for the development project, pursuant to which the nonprofit organization  
20 guarantees that it will operate a child-care facility or it will lease or sublease a child-care  
21 facility to one or more nonprofit child-care providers for as long as there is a demonstrated  
22 need under ~~Subsection (h) of this~~ Section 414.12 ~~314.4~~, and that it will comply with all of the  
23 requirements imposed on the nonprofit organization under ~~this Paragraph (b)(6)~~ Section 414.10  
24 and imposed on a sponsor under ~~Subsections (g), (h) and (i) of~~ Sections 414.4 ~~314.4~~.



1           (e) ~~(E)~~ To support the provision of a child-care facility in accordance with the foregoing  
2 requirements, the sponsor has paid to the nonprofit organization a sum which equals or  
3 exceeds the amount of the in-lieu fee which would have been applicable to the project under  
4 Section 414.4(b)(4) ~~314.4(b)(4)~~.

5           (f) ~~(F)~~ The Department of Children, Youth and Their Families has determined that the  
6 proposed child-care facility will help meet the needs identified in the San Francisco Child Care  
7 Needs Assessment and will be consistent with the City Wide Child Care Plan; provided,  
8 however, that this Paragraph (F) shall not apply to any office or hotel development project  
9 approved by the Planning Commission prior to December 31, 1999.

10           Upon compliance with the requirements of this Section Part, the nonprofit organization  
11 shall enjoy all of the rights and be subject to all of the obligations of the sponsor, and the  
12 sponsor shall have no further rights or obligations under ~~this~~ Section 414.1 et seq.

13           ~~(c) — The Director of the Department of Building Inspections shall provide notice in writing to  
14 the Director of Planning at least five business days prior to issuing the first certificate of occupancy for  
15 any development project subject to this Section. If the Director of Planning notifies the Director of the  
16 Department of Building Inspections within such time that the sponsor has not complied with the  
17 provisions of Section, the Director of the Department of Building Inspections shall deny any and all  
18 construction documents and certificates of occupancy. If the Director of Planning notifies the Director  
19 of the Department of Building Inspections that the sponsor has complied with this Section or fails to  
20 respond within five business days, a certificate of occupancy shall not be disapproved pursuant to this  
21 Section. Any failure of the Director of the Department of Building Inspections or the Director of  
22 Planning to give any notice under this Subsection shall not relieve a sponsor from compliance with this  
23 Section.~~

24           ~~(d) — In the event that the Department or the Commission takes action affecting any  
25 development project subject to this Section and such action is thereafter modified, superseded, vacated,~~

1 ~~or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by~~  
2 ~~court action, the permit application for such office development project shall remanded to the~~  
3 ~~Department or Commission within 60 days following the date on which such action is final to~~  
4 ~~determine whether the proposed project has been changed in a manner which affects the area of the~~  
5 ~~child-care facility or the amount of the in-lieu fee to be provided under this Section 314.4 and, if so, the~~  
6 ~~Department or the Commission shall revise the child-care requirement imposed on the permit~~  
7 ~~application in compliance with this Section, and shall promptly notify the Treasurer and DBI of that~~  
8 ~~revision.~~

9 (e) ~~— The sponsor shall supply all information to the Treasurer, the Department, and the~~  
10 ~~Commission necessary to make a determination as to the applicability of this Section and the number of~~  
11 ~~gross square feet of office or hotel space subject to this Section.~~

12 (f) ~~— Within nine months of the effective date of Section the Commission shall, after public~~  
13 ~~notice and a hearing pursuant to Charter Section 4.104, adopt rules and regulations by which~~  
14 ~~compliance with this Subsection shall be determined.~~

15 (g) SEC. 414.11. SPONSOR REPORTS TO THE DEPARTMENT. In the event that a  
16 sponsor elects to satisfy its child-care requirement under Section 414.5, 414.6, 414.7, or 414.9  
17 ~~314(b)(1), (2), (3) or (5)~~ by providing an on-site or near-site child-care facility, the sponsor shall  
18 submit a report to the Department in January of each year for the life of the child-care facility.  
19 The report shall have attached thereto a copy of the license issued by the California  
20 Department of Social Services permitting operation of the child-care facility, and shall state:

- 21 (1) The address of the child-care facility;
- 22 (2) The name and address of the child-care provider operating the facility;
- 23 (3) The size of the center in terms of floor area;
- 24 (4) The capacity of the child-care facility in terms of the maximum number of  
25 children for which the facility is authorized to care under the license;

1 (5) The number and ages of children cared for at the facility during the previous  
2 year; and

3 (6) The fees charged parents for use of the facility during the previous year.

4 ~~(h)~~ SEC. 414.12. APPLICATION TO ELIMINATE THE CHILD-CARE FACILITY OR  
5 REDUCE THE FLOOR AREA. In the event that a sponsor elects to satisfy its child-care  
6 requirement under ~~Paragraphs~~ Sections 414.5, 414.6, 414.7 or 414.9 ~~314.4 (b)(1), (2), (3) or (5)~~ by  
7 providing an on-site or near-site child-care facility, or under ~~Paragraph~~ Section 414.10  
8 ~~314.4(b)(6)~~ by agreement with a non-profit organization, the sponsor, or in the case of a facility  
9 created pursuant to ~~Paragraph~~ Section 414.10 ~~314.4(b)(6)~~ the non-profit organization, may apply  
10 to the Department to eliminate the facility or to reduce the floor area of the facility in any  
11 amount, providing, however, that the gross floor area of a reduced facility is at least 2,000  
12 square feet. The Department shall schedule a public hearing on any such application before  
13 the Commission and provide notice pursuant to ~~City Planning Code~~ Section 306.3(a) of this  
14 Code at least two months prior to the hearing. The application may be granted only where the  
15 sponsor has demonstrated that there is insufficient demand for the amount of floor area then  
16 devoted to the on-site or near-site child-care facility. The actual reduction in floor area or  
17 elimination of the child-care facility shall not be permitted in any case until six months after the  
18 application is granted. Such application may be made only five years or more after the  
19 issuance of the first certificate of occupancy for the project. Prior to the reduction in floor area  
20 or elimination of the child care facility, the sponsor shall pay an in-lieu fee to the Development  
21 Fee Collection Unit at DBI ~~City's Treasurer~~ to be computed as follows:

(20 - No. of years since issuance of <u>first construction document or first</u> certificate of occupancy, <u>whichever</u>	×	Net reduction gross sq. ft. child-care facility	×	\$100 =	Total Fee
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<u>applies</u>				
20				

Upon payment of the fee in full to the ~~Treasurer~~ Development Fee Collection Unit and upon request of the sponsor, ~~the Treasurer~~ Development Fee Collection Unit shall issue a certification that the fee has been paid. The sponsor shall present such certification to the Director prior to the reduction in the floor area or elimination of the child care facility.

(i) SEC. 414.13. AFFORDABILITY REQUIREMENT. The child care provider operating any child care facility pursuant to Sections 414.5, 414.6, 414.7 or 414.9 ~~314.4(b)(1), (2), (3) or (5)~~ shall reserve at least 10 percent of the maximum capacity of the child care facility as determined by the license for the facility issued by the California Department of Social Services to be affordable to children of households of low income. The Department shall adopt rules and regulations to determine the rates to be charged to such households at the same time and following the procedures for the adoption of rules and regulations under Section 414.14 ~~314.5~~.

(j) ~~The fee required by this ordinance is due and payable to the Treasurer prior to issuance of the first certificate of occupancy for the office development project. Except in the case of a reduction in space of the child care facility pursuant to Subsection (h), if the fee remains unpaid following issuance of the certificate, any amount due shall accrue interest at the rate of one and one-half percent per month, or fraction thereof, from the date of issuance of the certificate until the date of final payment. Where the amount due is as a result of a reduction in space of the child care facility pursuant to subsection (h), such interest shall accrue from the date on which the available space is reduced until the date of final payment.~~

(k) ~~In the event that a development project for which an in-lieu fee imposed under Section has been fully paid is demolished or converted to a use or uses not subject to this ordinance prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion of the amount of an~~

1 *in-lieu fee paid. The portion of the fee refunded shall be determined on a pro-rata basis according to*  
2 *the ratio of the remaining useful life of the project at the time of demolition or conversion in relation to*  
3 *its total useful life. For purposes of this ordinance, the useful life of a development project shall be 50*  
4 *years.*

5 *(1) — (1) A sponsor's failure to pay the fee imposed pursuant to this ordinance shall constitute*  
6 *cause for the City to record a lien against the development project in the sum of the in-lieu fee required*  
7 *under this ordinance, as adjusted under this ordinance, as adjusted under this Section.*

8 *(2) — If, for any reason, the fee imposed pursuant to this ordinance remains unpaid following*  
9 *issuance of the certificate, the Treasurer shall initiate proceedings in accordance with the procedures*  
10 *set forth in Article XX of Chapter 10, of the San Francisco Administrative Code to make the entire*  
11 *unpaid balance of the fee, including interest, a lien against all parcels used for the development*  
12 *project. The Treasurer shall send all notices required by that Article to the owner of the property as*  
13 *well as the sponsor. The Treasurer shall also prepare a preliminary report notifying the sponsor of a*  
14 *hearing to confirm such report by the Board of Supervisors at least 10 days before the date of the*  
15 *hearing. The report to the sponsor shall contain the sponsor's name, a description of the sponsor's*  
16 *development project, a description of the parcels of real property to be encumbered as set forth in the*  
17 *Assessor's Map Books for the current year, a description of the alleged violation of this ordinance, and*  
18 *shall fix a time, date, and place for hearing. The Treasurer shall cause this report to be mailed to the*  
19 *sponsor and each owner of record of the parcels of real property subject to lien. Except for the release*  
20 *of lien recording fee authorized by Administrative Code Section 10.237, all sums collected by the Tax*  
21 *Collector pursuant to this ordinance shall be held in trust by the Treasurer and deposited in the Child*  
22 *Care Capital Fund established in Section 314.5.*

23 *(3) — Any notice required to be given to a sponsor or owner shall be sufficiently given or*  
24 *served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or*  
25 *owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor*

1 ~~or owner at the official address of the sponsor or owner maintained by the Tax Collector for the~~  
2 ~~mailing of tax bills or, if no such address is available, to the sponsor at the address of the development~~  
3 ~~project, and to the applicant for the site or building permit at the address on the permit application.~~

4 SEC. ~~414.14~~ 314.5. CHILD CARE CAPITAL FUND.

5 There is hereby established a separate fund set aside for a special purpose called the  
6 Child Care Capital Fund ("Fund"). All monies contributed pursuant to the provisions of *this*  
7 Section 414.1 et seq., and all other monies from the City's General Fund or from contributions  
8 from third parties designated for the fund shall be deposited in the fund. ~~For a period of three~~  
9 ~~years from the date of final adoption of this ordinance, no more than 25 percent of the money deposited~~  
10 ~~in the fund shall be paid to providers operating child care facilities subject to Sections 314.4(b)(1), (2),~~  
11 ~~(3) and (5) to reduce the cost of providing affordable child care services to children from households of~~  
12 ~~low income as required in Section 314.4(i). The remaining monies deposited in the fund during such~~  
13 ~~three year period, and~~ All monies in the fund following expiration of such three year period, shall be  
14 used solely to increase and/or improve the supply of child care facilities affordable to  
15 households of low and moderate income; except that monies from the fund shall be used by  
16 the Director to fund in a timely manner ~~a~~ any nexus study required to demonstrate the  
17 relationship between commercial development projects and child care demand as described  
18 in ~~San Francisco Planning Code~~ Section 414.4 314.4. ~~In the event that no child care facility is in~~  
19 ~~operation under Sections 314.4(b)(1), (2), (3) or (5) during such three year period, the maximum of 25~~  
20 ~~percent of the fund reserved for households of low income shall be spent solely to increase and/or~~  
21 ~~improve the supply of child care facilities affordable to households of low and moderate income.~~ The  
22 fund shall be administered by the Director, who shall adopt rules and regulations governing  
23 the disposition of the fund which are consistent with *this* Section 414.1 et seq. Such rules and  
24 regulations shall be subject to approval by resolution of the Board of Supervisors.

25 ~~SEC. 314.6. PARTIAL INVALIDITY AND SEVERABILITY.~~

1 *If any provision of this Section, or its application to any development project or to any*  
2 *geographical area of the City, is held invalid, the remainder of the Section, or the application of such*  
3 *provision to other office or hotel development projects or to any other geographical areas of the City,*  
4 *shall not be affected thereby.*

5 ~~SEC. 314. 7. ANNUAL EVALUATION.~~

6 ~~Commencing one year after the effective date of this Section and each year thereafter, the~~  
7 ~~Director shall report to the Commission at a public hearing and to the Planning, Housing and~~  
8 ~~Development Committee of the Board of Supervisors at a separate public hearing, on the status of~~  
9 ~~compliance with this Section and the efficacy of this Section in mitigating the City's shortage of child~~  
10 ~~care facilities generated by the office and hotel development projects subject to this Section. Five years~~  
11 ~~after the effective date of this Section, the Commission shall review the formulae set forth in Section~~  
12 ~~314.4. In such report, the Director shall recommend any changes in the formulae.~~

13 SEC. ~~414.15.~~ ~~314.8.~~ DECREASE IN CHILD CARE FORMULAE AFTER STUDY.

14 If the Commission determines after review of an empirical study that the formulae set  
15 forth in Section ~~414.4~~ ~~314.4~~ impose a greater requirement for child care facilities than is  
16 necessary to provide child care for the number of employees attracted to office and hotel  
17 development projects subject to ~~this~~ Section ~~414.1 et seq.~~, the Commission shall, within three  
18 years of making such determination, refund that portion of any fee paid or permit a reduction  
19 of the space dedicated for child care by a sponsor consistent with the conclusions of such  
20 study. The Commission shall adjust any sponsor's requirement and the formulae set forth in  
21 Section ~~414.4~~ ~~314.4~~ so that the amount of the exaction is set at the level necessary to provide  
22 child care for the employees attracted to office and hotel development projects subject to ~~this~~  
23 Section ~~414.1 et seq.~~.

24 SEC. ~~415 (formerly Section 315).~~ HOUSING REQUIREMENTS FOR RESIDENTIAL  
25 AND LIVE/WORK DEVELOPMENT PROJECTS. Sections ~~415.1 through 415.9~~ ~~315.1-315.9,~~

1 hereafter Section 415.1 et seq., set forth the requirements and procedures for the Residential  
2 Inclusionary Affordable Housing Program ("Program"). The effective date of these requirements  
3 shall be either April 5, 2002, which is the date that the requirements originally became effective, or the  
4 date a subsequent modification, if any, became effective.

5 The Department ~~of City Planning~~ and MOH the Mayor's Office of Housing shall periodically  
6 publish a Procedures Manual containing procedures for monitoring and enforcement of the  
7 policies and procedures for implementation of this Program. The Procedures Manual must be  
8 made available at the Zoning Counter of the ~~Planning~~ Department and on the ~~Planning~~  
9 Department's web site. The Procedures Manual shall not be amended, except for an annual  
10 update of the affordability housing guidelines, which reflect updated income limits, prices, and  
11 rents, without approval of the ~~Planning~~ Commission or as otherwise specified herein.

12 The Procedures Manual in effect at the time of initial purchase or initial rental of a unit  
13 shall govern the regulation of that unit until it is sold or re-rented unless an owner or current  
14 tenant chooses to be governed by all of the more up-to-date provisions of the then-current  
15 Procedures Manual. In that case, the owner or tenant must agree to be governed by the  
16 totality of the new regulations -- an owner or tenant may not pick some provisions from the  
17 Procedures Manual in effect at the time of initial purchase or initial rental and some in effect in  
18 the then-current Procedures Manual. If the owner or tenant chooses to be governed by the  
19 then-current Procedures Manual he or she shall sign an agreement with the City to that effect,  
20 and the ~~Planning~~ Department and MOH Mayor's Office of Housing shall apply all of the rules  
21 and regulations in the then-current Procedures Manual to the unit.

22 SEC. 415.1. 315.2. FINDINGS.

23 A. The Board of Supervisors hereby finds and declares as follows:

24 Affordable Housing: The findings in former Planning Code Section 315.2 of the  
25 Inclusionary Affordable Housing Ordinance are hereby readopted and updated as follows:



1           1.       Affordable housing is a paramount statewide concern. In 1980, the Legislature  
2 declared in Government Code Section 65580:

3           (a)       The availability of housing is of vital statewide importance, and the early  
4 attainment of decent housing and a suitable living environment for every California family is a  
5 priority of the highest order.

6           (b)       The early attainment of this goal requires the cooperative participation of  
7 government and the private sector in an effort to expand housing opportunities and  
8 accommodate the housing needs of Californians of all economic levels.

9           (c)       The provision of housing affordable to low-and moderate-income households  
10 requires the cooperation of all levels of government.

11          (d)       Local and state governments have a responsibility to use the powers vested in  
12 them to facilitate the improvement and development of housing to make adequate provision  
13 for the housing needs of all economic segments of the community.

14           The Legislature further stated in Government Code Section 65581 that:

15           It is the intent of the Legislature in enacting this article:

16          (a)       To assure that counties and cities recognize their responsibilities in contributing  
17 to the attainment of the state housing goal.

18          (b)       To assure that counties and cities will prepare and implement housing elements  
19 which will move toward attainment of the state housing goal.

20          (c)       To recognize that each locality is best capable of determining what efforts are  
21 required by it to contribute to the attainment of the state housing goal.

22           The California Legislature requires each local government agency to develop a  
23 comprehensive long-term general plan establishing policies for future development. As  
24 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must  
25 (1) "encourage the development of a variety of types of housing for all income levels,

1 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to  
2 meet the needs of low- and moderate-income households"; and (3) "conserve and improve  
3 the condition of the existing affordable housing stock, which may include addressing ways to  
4 mitigate the loss of dwelling units demolished by public or private action."

5         2. San Francisco faces a continuing shortage of affordable housing for very low  
6 and low-income residents. The San Francisco Planning Department reported that for the four-  
7 year period between 2000 and 2004, 8,389 total new housing units were built in San  
8 Francisco. This number includes 1,933 units for low and very low-income households out of a  
9 total need of 3,930 low and very low-income housing units for the same period. According to  
10 the state Department of Housing and Community Development, there will be a regional need  
11 for 230,743 new housing units in the nine Bay Area counties from 1999 *through* –2006. Of that  
12 amount, at least 58 percent, or 133, 164 units, are needed for moderate, low and very low-  
13 income households. The Association of Bay Area Governments (ABAG) is responsible for  
14 dividing the total regional need numbers among its member governments which includes both  
15 counties and cities. ABAG estimates that San Francisco's low and very low-income housing  
16 production need from 1999 through 2006 is 7,370 units out of a total new housing need of  
17 20,372 units, or 36 percent of all units built. Within the past four years, only 23 percent of all  
18 housing built, or 49 percent of the previously projected housing need for low and very low-  
19 income housing for the same period, was produced in San Francisco. The production of  
20 moderate income rental units also fell short of the ABAG goal. Only 351 moderate income  
21 units were produced over the previous four years, or four percent of all units built, compared  
22 to ABAG's call for 28 percent of all units to be affordable to households of moderate income.  
23 Given the need for 3,007 moderate income units over the four-year period, only 12 percent of  
24 the projected need for moderate income units was built.

1           3.       In response to the above mandate from the California Legislature and the  
2 projections of housing needs for San Francisco, San Francisco has instituted several  
3 strategies for producing new affordable housing units. The 2004 Housing Element of the  
4 General Plan recognizes the need to support affordable housing production by increasing site  
5 availability and capacity for permanently affordable housing through the inclusion of affordable  
6 units in larger housing projects. Further, the City, as established in the General Plan, seeks to  
7 encourage the distribution of affordable housing throughout all neighborhoods and, thereby,  
8 offer diverse housing choices and promote economic and social integration. The 2004  
9 Housing Element calls for an increase in the production of new affordable housing and for the  
10 development of mixed income housing to achieve social and cultural diversity. *This Section*  
11 *415.1 et seq. legislation* furthers the goals of the State Legislature and the General Plan.

12           4.       The 2005 Consolidated Plan for July 1, 2000--June 30, 2005, issued by the  
13 Mayor's Office of Community Development and the Mayor's Office of Housing, establishes  
14 that extreme housing pressures face San Francisco, particularly in regard to low- and  
15 moderate-income residents. Many elements constrain housing production in the City. This is  
16 especially true of affordable housing. As discussed in the 2004 Housing Element published by  
17 the City Planning Department. San Francisco is largely built out, with very few large open  
18 tracts of land to develop. As noted in the 2000 Consolidated Plan, its geographical location at  
19 the northern end of a peninsula inherently prevents substantial new development. There is no  
20 available adjacent land to be annexed, as the cities located on San Francisco's southern  
21 border are also dense urban areas. Thus new construction of housing is limited to areas of the  
22 City not previously designated as residential areas, infill sites, or to areas with increased  
23 density. New market-rate housing absorbs a significant amount of the remaining supply of  
24 land and other resources available for development and thus limits the supply of affordable  
25 housing.

1           There is a great need for affordable rental and owner-occupied housing in the City.  
2           Housing cost burden is one of the major standards for determining whether a locality is  
3           experiencing inadequate housing conditions, defined as households that expend 30 percent  
4           or more of gross income for rent or 35 percent or more of household income for owner costs.  
5           The 2000 Census indicates that 64,400 renter households earning up to 80 percent of the  
6           area median income are cost burdened. Of these, about 25,000 households earn less than 50  
7           percent AMI and pay more than 50 percent of their income to rent. According to more recent  
8           data from the American Housing Survey, 80,662 total renter households, or 41 percent, are  
9           cost burdened in 2003. A significant number of owners are also cost burdened. According to  
10          2000 Census data, 18,237 of owners are cost-burdened, or 23 percent of all owner  
11          households. The 2003 American Housing Survey indicates that this level has risen to 29  
12          percent.

13          The San Francisco residential real estate market is one of the most expensive in the  
14          United States. In May 2005, the California Association of Realtors reported that the median  
15          priced home in San Francisco was \$755,000.00. This is 18 percent higher than the median  
16          priced home one year earlier, 44 percent higher than the State of California median, and 365  
17          percent higher than the nation average. While the national homeownership rate is  
18          approximately 69 percent, only approximately 35 percent of San Franciscans own their own  
19          home. The majority of market-rate homes for sale in San Francisco are priced out of the reach  
20          of low and moderate income households. In May 2005, the average rent for a two-bedroom  
21          apartment was \$1,821.00, which is affordable to households earning over \$74,000.00.

22          These factors contribute to a heavy demand for affordable housing in the City that the  
23          private market cannot meet. Each year the number of market rate units that are affordable to  
24          low income households is reduced by rising market rate rents and sales prices. The number  
25          of households benefiting from rental assistance programs is far below the need established by

1 the 2000 Census. Because the shortage of affordable housing in the City can be expected to  
2 continue for many years, it is necessary to maintain the affordability of the housing units  
3 constructed by housing developers under this Program. The 2004 Housing Element of the  
4 General Plan recognizes this need. Objective 1 of the Housing Element is to provide new  
5 housing, especially permanently affordable housing, in appropriate locations which meets  
6 identified housing needs and takes into account the demand for affordable housing created by  
7 employment demand. Objective 6 is to protect the affordability of existing housing, and to  
8 ensure that housing developed to be affordable be kept affordable for 50--75 year terms, or  
9 even longer if possible.

10 In 2004 the National Housing Conference issued a survey entitled "Inclusionary  
11 Zoning: The California Experience." The survey found that as of March 2003, there were 107  
12 cities and counties using inclusionary housing in California, one-fifth of all localities in the  
13 state. Overall, the inclusionary requirements were generating large numbers of affordable  
14 units. Only six percent of jurisdictions reported voluntary programs, and the voluntary nature  
15 appears to compromise the local ability to guarantee affordable housing production. While  
16 there was a wide range in the affordability percentage-requirements for inclusionary housing,  
17 the average requirement for affordability in rental developments is 13 percent. Approximately  
18 half of all jurisdictions require at least 15 percent to be affordable, and one-quarter require 20  
19 percent or more to be affordable.

20 5. Development of new market-rate housing makes it possible for new residents to  
21 move to the City. These new residents place demands on services provided by both public  
22 and private sectors. Some of the public and private sector employees needed to meet the  
23 needs of the new residents earn incomes only adequate to pay for affordable housing.  
24 Because affordable housing is in short supply within the City, such employees may be forced  
25 to live in less than adequate housing within the City, pay a disproportionate share of their

1 incomes to live in adequate housing within the City, or commute ever-increasing distances to  
2 their jobs from housing located outside the City. These circumstances harm the City's ability  
3 to attain goals articulated in the City's General Plan and place strains on the City's ability to  
4 accept and service new market-rate housing development.

5           6.       The development of affordable housing on the same site as market-rate housing  
6 increases social and economic integration vis-a-vis housing in the City and has corresponding  
7 social and economic benefits to the City. Inclusionary housing provides a healthy job and  
8 housing balance. Inclusionary housing provides more affordable housing close to employment  
9 centers which in turn may have a positive economic impact by reducing such costs as  
10 commuting and labor costs. However, there may also be trade-offs where constructing  
11 affordable units at a different site than the site of the principle project may produce a greater  
12 number of affordable units without additional costs to the project applicant. If a project  
13 applicant may produce a significantly greater number of affordable units off-site then it is in  
14 the best interest of the City to permit the development of affordable units at a different location  
15 than that of the principal project.

16           7.       Provided project applicants can take these requirements into consideration  
17 when negotiating to purchase land for a housing project, the requirements of ~~this~~ Section 415.1  
18 et seq. are generally financially feasible for project applicants to meet, particularly because of  
19 the benefits being conferred by the City to housing projects under Section 415.1 et seq. ~~this~~  
20 ~~ordinance.~~ Section 406 This Ordinance provides a means by which a project applicant may seek  
21 a reduction or waiver of the requirements of ~~this~~ these mitigation fees if the project applicant  
22 can show that imposition of these requirements would create an unlawful financial burden.

23           8.       Conditional Use and Planned Unit Development Permits permit the development  
24 of certain uses not permitted as of right in specific districts or greater density of permitted  
25 residential uses. As the General Plan recognizes, through the conditional use and planned

1 unit development process, applicants for housing projects generally receive material  
2 economic benefits. Such applicants are generally permitted to build in excess of the generally  
3 applicable black letter requirements of the Planning Code for housing projects resulting in  
4 increased density, bulk, or lot coverage or a reduction in parking or other requirements or an  
5 approval of a more intensive use over that permitted without the conditional use permit or  
6 planned unit development permit. Through the conditional use and planned unit development  
7 process, building standards can be relaxed in order to promote lower cost home construction.  
8 An additional portion of San Francisco's affordable housing needs can be supplied (with no  
9 public subsidies or financing) by private sector housing developers developing inclusionary  
10 affordable units in their large market-rate projects in exchange for the density and other  
11 bonuses conferred by conditional use or planned unit development approvals, provided it is  
12 financially attractive for private sector housing developers to seek such conditional use and/or  
13 planned unit development approvals.

14 *9. — Live/work as defined in the Planning Code recognizes that "residential living space" is*  
15 *an integral part of a live/work unit. A substantial portion of new housing development in San Francisco*  
16 *has been live/work units in Mixed Use Districts South of Market and in industrially zoned areas of San*  
17 *Francisco where residential development has not traditionally been permitted as of right. Live/work*  
18 *development projects are subject to less stringent development standards than other types of housing*  
19 *projects in certain Mixed Use Districts and industrially zoned areas. Live/work developments are*  
20 *conferred an equivalent benefit as projects going through the conditional use or planned unit*  
21 *development permit process by virtue of the fact that (1) live/work developments are not required to get*  
22 *a conditional use permit for housing development in some Mixed Use Districts and in all industrially*  
23 *zoned districts where other residential uses are required to get a conditional use permit; (2) live/work*  
24 *developments receive a five foot height bonus above prevailing height limits for specific*  
25 *neighborhoods; (3) live/work units are permitted to cover 100 percent of a lot rather than the stricter*

1 *lot coverage requirements that apply to other residential development, typically requiring rear yards*  
2 *equal to 15 feet in length or 25 percent of the lot, whichever is greater. Given these benefits conferred*  
3 *by statute which allow live/work developments to exceed the limitations on other housing development*  
4 *in the City, the Board of Supervisors finds that, for purposes of this Program, live/work developments*  
5 *are conferred a private benefit equal to or in excess of housing projects which require a conditional use*  
6 *or planned unit development permit. The relaxed building standards applied to live/work projects*  
7 *promote the ability to include lower cost home production in live/work projects. A unit meets the*  
8 *definition of California Civil Code Section 1940(c) as a "dwelling unit" because it "is used as a home,*  
9 *residence or sleeping place by one person who maintains a household or by two or more persons who*  
10 *maintain a common household." Live/work units shall not be considered "commercial real property"*  
11 *for purposes of Civil Code Section 1954.25 et seq.*

12 9. 10. The City wants to balance the burden on private property owners with the  
13 demonstrated need for affordable housing in the City. For the reasons stated above, the  
14 Board of Supervisors thus intends to increase the inclusionary housing requirements for all  
15 residential projects. In order to balance the burden on property owners, the Board intends to  
16 limit the application of an inclusionary housing requirement to 15 percent for housing projects  
17 that do not receive any of the benefits described above through the conditional use or planned  
18 unit development process, or in live/work projects. A slightly higher percentage will be applied  
19 to projects which generally receive benefits through the conditional use or planned unit  
20 development process, or in live/work projects. The Housing Element (Policy 4.2) states:  
21 Include affordable units in larger housing developments. It also calls for the City to review its  
22 inclusionary housing program regularly to ensure fair burden and not constrain new housing  
23 production. The Board of Supervisors has reviewed the inclusionary affordable housing  
24 program and finds that, for purposes of the Housing Element of the General Plan, increasing  
25 the inclusionary housing requirements ensures more fair burden on all housing development



1 and will not constrain new housing production. The Board of Supervisors has reviewed the  
2 inclusionary affordable housing program and finds that, for purposes of the Housing Element  
3 of the General Plan, a housing project of five units or more is a larger housing project.  
4 Expanding the inclusionary housing requirements to buildings of five units or more ensures  
5 more fair burden on all housing development and will not constrain new housing production.

6 ~~10. 11.~~ The findings of *former* Planning Code Section 313.2 for the Jobs-Housing  
7 Linkage Program, Planning Code Sections 313 et seq., relating to the shortage of affordable  
8 housing, the low vacancy rate of housing affordable to persons of lower and moderate  
9 income, and the decrease in construction of affordable housing in the City are hereby  
10 readopted.

11 ~~11. 12.~~ The Land Use and Economic Development Committee of the Board of  
12 Supervisors held hearings on this legislation on July 12 and 19, 2006. At those hearings, the  
13 Committee heard testimony from Planning Department staff and consultant Kate Funk of  
14 Keyser Marston and Associates regarding a study undertaken at the direction of the Planning  
15 Department by the consultant Keyser Marston Associates. The study was entitled Inclusionary  
16 Housing Program Sensitivity Analysis, dated July 7, 2006, and was undertaken to examine  
17 the economic impacts of adjusted inclusionary requirements on market-rate housing projects  
18 ("Sensitivity Analysis"). The study can be found in Board File No. 051685 and is incorporated  
19 herein by reference. The study was guided by the Planning Department and *MOH Mayor's*  
20 *Office of Housing* and informed by a Technical Advisory Committee comprised of a variety of  
21 experts from the San Francisco Housing Development and Affordable Housing Advocacy  
22 Communities. Planning Department staff presented a report summarizing the findings of the  
23 Sensitivity Analysis and the recommendations of the Technical Advisory Committee. That  
24 report, dated July 10, 2006, is found in Board File No. 051685 and is incorporated herein by  
25 reference. After considering the Sensitivity Analysis and staff report and hearing the

1 recommendations and testimony of the Planning Department, MOH Mayor's Office of Housing,  
2 members of the Technical Advisory Committee, and members of the public including  
3 representatives of housing developers, community members, and affordable housing  
4 advocates, the Land Use and Economic Development Committee considered various  
5 amendments to the legislation. The Committee found, among other things, that it was in the  
6 public interest to increase the percentage requirements of the ordinance, but not by as much  
7 as originally proposed; to modify the application dates of the ordinance to grandfather more  
8 existing projects from the increased percentage requirements, but to make most projects  
9 subject to the other requirements of the ordinance; and to require further study on some  
10 issues by the Planning Department and MOH Mayor's Office of Housing.

11 12. 13. The City of San Francisco, under the direction of the Office of the Controller, has  
12 undertaken is undertaking a comprehensive program of analyses to update its programs and  
13 supporting documentation for many types of fees, including updating nexus analyses in  
14 support of development impact fees. At the direction of the Board of Supervisors and as part  
15 of this larger analysis, the City contracted with Keyser Marston Associates to prepare a nexus  
16 analysis in support of the Inclusionary Housing Program, or an analysis of the impact of  
17 development of market rate housing on affordable housing supply and demand. The Planning  
18 Department and MOH Mayor's Office of Housing worked closely with the consultant and also  
19 consulted with the Technical Advisory Committee, noted above, comprised of a variety of  
20 experts from the San Francisco housing development and affordable housing advocacy  
21 communities.

22 The City's current position is that the City's Inclusionary Housing Program including the  
23 in-lieu fee provision which is offered as an alternative to building units within market rate  
24 projects, is not subject to the requirements of the Mitigation Fee Act, Government Code  
25 Sections 66000 et seq. While the City does not expect to alter its position on this matter, due

1 to past legislative actions supporting such a study, the Citywide study being undertaken to  
2 conduct nexus studies in other areas, and a general interest in determining whether the  
3 Inclusionary Program can be supported by a nexus type analysis as an additional support  
4 measure, the City contracted to undertake the preparation of a nexus analysis at this time.

5 The final study can be found in the Board of Supervisors File ~~No.~~ \_\_\_\_\_ and is  
6 incorporated by reference herein. The Board of Supervisors has reviewed the study and staff  
7 analysis and report of the study and, on that basis finds that the study supports the current  
8 inclusionary housing requirements. Specifically, the Board finds that this study: identifies the  
9 purpose of the fee to mitigate impacts on the demand for affordable housing in the City;  
10 identifies the use to which the fee is to be put as being to increase the City's affordable  
11 housing supply; and establishes a reasonable relationship between the use of the fee for  
12 affordable housing and the need for affordable housing and the construction of new market  
13 rate housing. Moreover, the Board finds that the current inclusionary requirements are less  
14 than the cost of mitigation and do not include the costs of remedying any existing deficiencies.  
15 The Board also finds that the study establishes that the current inclusionary requirements do  
16 not duplicate other city requirements or fees.

17 ~~13. 14.~~ The Board of Supervisors recognizes that this Inclusionary Housing Program is  
18 only one part of the City's overall strategy for providing affordable housing. The City has spent  
19 ~~will spend~~ over \$154 million in capital funds on affordable housing in 2006-07 of combined  
20 expenditures by MOH ~~the Mayor's Office of Housing~~ and San Francisco Redevelopment  
21 Agency, but not including expenditures by the Department of Public Health or the Human  
22 Services Agency. At the very most, only \$22 million of those monies ~~will has~~ come from  
23 contributions from private developers through this Inclusionary Program or other similar  
24 programs. The City ~~expects~~ expected to spend over \$78 million on affordable housing in 2007-  
25 08 and, the current expectation is that only \$2.5 million of those monies will come from

1 contributions from private developers through this Inclusionary Program or other similar  
2 programs.

3 SEC. ~~415.2~~ ~~315.1~~. DEFINITIONS. *(a) In addition to the definitions set forth in Section 401*  
4 *of this Article, ~~the~~ The following definitions shall govern interpretation of Section 415.1 et seq.*  
5 *this ordinance:*

6 (1) — *"Affordable housing project." shall mean a housing project containing units constructed*  
7 *to satisfy the requirements of Sections ~~315.4 or 315.5.~~*

8 (2) — *"Affordable to a household" shall mean a purchase price that a household can afford to*  
9 *pay based on an annual payment for all housing costs, as defined in California Code of Regulations*  
10 *("CCR") Title 25, Section 6920, as amended from time to time, of 33 percent of the combined household*  
11 *annual gross income, assuming a down payment recommended by the Mayor's Office of Housing in the*  
12 *Procedures Manual, and available financing, or a rent that does not exceed 30 percent of a household's*  
13 *combined annual gross income. Where applicable, the purchase price or rent may be adjusted to reflect*  
14 *the absence or existence of a parking space(s), subject to the Department's policy on unbundled*  
15 *parking for affordable housing units as specified in the Procedures Manual and amended from time to*  
16 *time.*

17 (3) — *"Affordable to qualifying households" shall mean:*

18 (A) — *With respect to owned units, the average purchase price on the initial sale of all*  
19 *affordable owned units in an affordable housing project shall not exceed the allowable average*  
20 *purchase price and all units must be sold only to households with annual gross incomes up to and*  
21 *including 120 percent of median income for the City and County of San Francisco. In addition, each*  
22 *unit shall be sold:*

23 (i) — *Only to households with an annual gross income equal to or less than the qualifying*  
24 *limits for a household of moderate income, adjusted for household size;*

25 (ii) — *On the initial sale, at or below the maximum purchase price; and*

1 (iii) ~~On subsequent sales at or below the prices to be determined by the Director of the~~  
2 ~~Mayor's Office of Housing in the Conditions of Approval or Notice of Special Restrictions according to~~  
3 ~~the formula specified in the Procedures Manual, as amended from time to time, such that the units~~  
4 ~~remain affordable to qualifying households. The formula in the Procedures Manual may permit the~~  
5 ~~seller to include certain allowable capital improvements in the sales price.~~

6 (B) ~~With respect to rental units in an affordable housing project, the average annual rent,~~  
7 ~~including the cost utilities paid by the tenant according to HUD utility allowance established by the~~  
8 ~~San Francisco Housing Authority, shall not exceed the allowable average annual rent. Each unit shall~~  
9 ~~be rented:~~

10 (i) ~~Only to households with an annual gross income equal to or less than the qualifying~~  
11 ~~limits for a household of low income as defined in this Section;~~

12 (ii) ~~At or less than the maximum annual rent.~~

13 (4) (1) "Allowable average purchase price." shall mean a A price for all affordable owned  
14 units of the size indicated below that are affordable to a household of median income as  
15 defined in this Section, adjusted for the household size indicated below as of the date of the  
16 close of escrow, and, where applicable, adjusted to reflect the Department's policy on  
17 unbundled parking for affordable housing units as specified in the Procedures Manual and  
18 amended from time to time:

19

20 Number of Bedrooms (or, for live/work units	Number of Persons
21 square foot equivalency)	in Household
22 0 (Less than 600 square feet)	1
23 1 (601 to 850 square feet)	2
24 2 (851 to 1,100 square feet)	3

25

3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

(5) (2) "Allowable average annual rent." shall mean Annual rent for an affordable rental unit of the size indicated below that is 30 percent of the annual gross income of a household of median income as defined in this Section, adjusted for the household size indicated below, and, where applicable, adjusted to reflect the Department's policy on unbundled parking for affordable housing units as specified in the Procedures Manual and amended from time to time:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

(6) — "Annual gross income" shall mean gross income as defined in CCR Title 25, Section 6914, as amended from time to time, except that the Mayor's Office of Housing may, in order to promote consistency with the procedures of the San Francisco Redevelopment Agency, develop an asset test that differs from the State definition if it publishes that test in the Procedures Manual.

1           (7) — "Average annual rent." shall mean the total annual rent for the calendar year charged  
2 by a housing project for all affordable rental units in the project of an equal number of bedrooms  
3 divided by the total number of affordable units in the project with that number of bedrooms.

4           (8) — "Average purchase price." shall mean the purchase price for all affordable owned units  
5 in an affordable housing project of an equal number of bedrooms divided by the total number of  
6 affordable units in the project with that number of bedrooms.

7           (9) — "Community apartment." shall be as defined in San Francisco Subdivision Code Section  
8 1308(b).

9           (9a) "Conditional use" for purposes of this Ordinance means a conditional use authorization  
10 which, pursuant to the Planning Code, is required for the residential component of a project.

11           (10) — "Conditions of approval" shall be a set of written conditions imposed by the Planning  
12 Commission or another permit issuing City agency or appellate body to which a project applicant  
13 agrees to adhere and fulfill when it receives a conditional use or planned unit development permit for  
14 the construction of a principal project or other housing project subject to this Program.

15           (11) — "Condominium" shall be as defined in California Civil Code Section 783.

16           (12) — "Director" shall mean the Director of City Planning or his or her designee, including  
17 other City agencies or departments.

18           (13) — "First certificate of occupancy" shall mean either a temporary certificate of occupancy  
19 or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code  
20 Section 109, whichever is issued first.

21           (14) — Intentionally Left Blank.

22           (15) — "Household." shall mean any person or persons who reside or intend to reside in the  
23 same housing unit.

24           (16) — "Household of low income." shall mean a household whose combined annual gross  
25 income for all members does not exceed 60 percent of median income for the City and County of San

1 *Francisco, as calculated by the Mayor's Office of Housing using data from the United States*  
2 *Department of Housing and Urban Development (HUD) and adjusted for household size or, if data*  
3 *from HUD is unavailable, calculated by the Mayor's Office of Housing using other publicly available*  
4 *and credible data and adjusted for household size.*

5 *(17) "Household of median income" shall mean a household whose combined annual gross*  
6 *income for all members does not exceed 100 percent of the median income for the City and County of*  
7 *San Francisco, as calculated by the Mayor's Office of Housing using data from the United States*  
8 *Department of Housing and Urban Development (HUD) and adjusted for household size or, if data*  
9 *from HUD is unavailable, calculated by the Mayor's Office of Housing using other publicly available*  
10 *and credible data and adjusted for household size.*

11 *(17A) "Household of moderate income" shall mean a household whose combined annual gross*  
12 *income for all members does not exceed 120 percent of the median income for the City and County of*  
13 *San Francisco, as calculated by the Mayor's Office of Housing using data from the United States*  
14 *Department of Housing and Urban Development (HUD) and adjusted for household size or, if data*  
15 *from HUD is unavailable, calculated by the Mayor's Office of Housing using other publicly available*  
16 *and credible data and adjusted for household size.*

17 *(18) "Housing project" shall mean any development which has residential units as defined in*  
18 *the Planning Code, including but not limited to dwellings, group housing, independent living units, and*  
19 *other forms of development which are intended to provide long-term housing to individuals and*  
20 *households. "Housing project" shall not include that portion of a development that qualifies as an*  
21 *Institutional Use under the Planning Code. "Housing project" for purposes of this Program shall also*  
22 *include the development of live/work units as defined by Planning Code Section 102.13. Housing*  
23 *project for purposes of this Program shall mean all phases or elements of a multi-phase or multiple lot*  
24 *residential development.*



1           ~~(19)~~—"Housing unit" or "unit" shall mean a dwelling unit as defined in San Francisco  
2 ~~Housing Code Section 401.~~

3           ~~(20)~~—"Live/work unit" shall be as defined in San Francisco Planning Code Section 102.13.

4           ~~(21)~~—"Live/work project." shall mean a housing project containing more than one live/work  
5 ~~unit.~~

6           ~~(22)~~—"Long term housing" shall mean housing intended for occupancy by a person or persons  
7 ~~for 32 consecutive days or longer.~~

8           ~~(23)~~—"Market rate housing" shall mean housing constructed in the principal project that is  
9 ~~not subject to sales or rental restrictions.~~

10           ~~(24)~~ (3) "Maximum annual rent." shall mean ~~t~~The maximum rent that a housing developer  
11 may charge any tenant occupying an affordable unit for the calendar year. The maximum  
12 annual rent for an affordable housing unit of the size indicated below shall be no more than 30  
13 percent of the annual gross income for a household of low income as defined in this Section,  
14 as adjusted for the household size indicated below as of the first date of the tenancy:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

24           ~~(25)~~ (4) "Maximum purchase price." shall mean ~~t~~The maximum purchase price for an  
25 affordable owned unit of the size indicated below that is affordable to a household of

1 moderate income, adjusted for the household size indicated below, assuming an annual  
 2 payment for all housing costs of 33 percent of the combined household annual gross income,  
 3 a down payment recommended by MOH and set forth in the Procedures Manual, and  
 4 available financing:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

15 ~~(25A) "Mayor's Office of Housing" shall mean the Mayor's Office of Housing or its successor.~~

16 ~~(26) "Notice of Special Restrictions" shall mean a document recorded with the San Francisco~~  
 17 ~~Recorder's Office for any unit subject to this Program detailing the sale and resale or rental~~  
 18 ~~restrictions and any restrictions on purchaser or tenant income levels included as a Condition of~~  
 19 ~~Approval of the principal project relating to the unit.~~

20 ~~(27) "Off-site unit." shall mean a unit affordable to qualifying households constructed~~  
 21 ~~pursuant to this Ordinance on a site other than the site of the principal project.~~

22 ~~(28) "On-site unit" shall mean a unit affordable to qualifying households constructed~~  
 23 ~~pursuant to this Ordinance on the site of the principal project.~~

24 ~~(29) "Ordinance" shall mean Planning Code Sections 315.1 through 315.9.~~

1           (30) ~~—"Owned unit" shall mean a unit affordable to qualifying households which is a~~  
2 ~~condominium, stock cooperative, community apartment, or detached single family home. The owner or~~  
3 ~~owners of an owned unit must occupy the unit as their primary residence.~~

4           (31) ~~—"Owner" shall mean the record owner of the fee or a vendee in possession.~~

5           (32) ~~—"Principal project shall mean a housing development on which a requirement to provide~~  
6 ~~affordable housing units is imposed.~~

7           (33) ~~—"Procedures Manual" shall mean the City and County of San Francisco Affordable~~  
8 ~~Housing Monitoring Procedures Manual issued by the San Francisco Department of City Planning, as~~  
9 ~~amended.~~

10          (34) ~~—"Program" shall mean the Residential Inclusionary Affordable Housing Program.~~

11          (35) ~~—"Project applicant." shall mean an applicant for a building permit or a site permit or an~~  
12 ~~applicant for a conditional use permit or planned unit development permit, seeking approval from the~~  
13 ~~Planning Commission or Planning Department for construction of a housing project subject to this~~  
14 ~~Section, or such applicant's successors and assigns.~~

15          (36) ~~—"Rent" or "rental" shall mean the total charges for rent, utilities, and related housing~~  
16 ~~services to each household occupying an affordable unit.~~

17          (37) ~~—"Rental unit" shall mean a unit affordable to qualifying households which is not a~~  
18 ~~condominium, stock cooperative, or community apartment.~~

19          (38) ~~—"Student housing" shall mean a building where 100 percent of the residential uses are~~  
20 ~~affiliated with and operated by an accredited post-secondary educational institution. Typically, student~~  
21 ~~housing is for rent, not for sale. This housing shall provide lodging or both meals and lodging, by~~  
22 ~~prearrangement for one week or more at a time. This definition only applies in the Eastern~~  
23 ~~Neighborhoods Mixed Use Districts.~~

24           SEC. 415.3 ~~315.3~~. APPLICATION.

1 (a) Section 415.1 et seq. ~~This Ordinance~~ shall apply to any housing project that  
2 consists of five or more units where an individual project or a phased project is to be  
3 undertaken and where the total undertaking comprises a project with five or more units, even  
4 if the development is on separate but adjacent lots; and

5 (1) Does not require *Planning* Commission approval as a conditional use or planned  
6 unit development;

7 (2) Requires *Planning* Commission approval as a conditional use or planned unit  
8 development;

9 (3) Consists of live/work units as defined by ~~*Planning Code*~~ Section 102.13 of this  
10 Code; or

11 (4) Requires *Planning* Commission approval of replacement housing destroyed by  
12 earthquake, fire or natural disaster only where the destroyed housing included units restricted  
13 under the Residential Inclusionary Housing Program or the City's predecessor inclusionary  
14 housing policy, condominium conversion requirements, or other affordable housing program.

15 (b) Section 415.1 et seq. ~~This Ordinance~~ shall apply to all housing projects that have  
16 not received a first site or building permit on or before the effective date of Section 415.1 et seq.  
17 this Ordinance with the following exceptions. Until these application dates take effect as  
18 described below, the provisions of Section 415.1 et seq. ~~the Ordinance~~ as it exists on July 18,  
19 2006 shall govern.

20 (1) The amendments to the off-site requirements in Section ~~415.6~~415.5(c) and (d)  
21 relating to location and type of off-site housing, and Section ~~415.4(c)~~ 315.4(e) relating to when  
22 a developer shall declare whether it will choose an alternative to the on-site requirement shall  
23 apply only to projects that receive their *Planning* Commission or Department approval on or  
24 after the effective date of Section 415.1 et seq. ~~this legislation~~.

1           (2)     The amendments to the percentage-requirements of Section 415.1 et seq. this  
2 Ordinance that govern the number of affordable units a housing project is required to provide  
3 in Section 415.5(a) 315.4(a) and 415.6(a) 315.5(a) apply only to housing projects that submit  
4 their first application, including an environmental evaluation application or any other Planning  
5 Department or Building Department application, on or after July 18, 2006. Notwithstanding the  
6 foregoing, the amendments to the percentage-requirements of Section 415.1 et seq. this  
7 Ordinance also apply to any project that has not received its final Planning Commission or  
8 Department approvals before July 18, 2006 for housing projects that receive a Zoning Map  
9 amendment or Planning Code text amendment related to their project approvals that (A)  
10 results in a net increase in the number of permissible residential units, or (B) results in a  
11 material increase in the net permissible residential square footage. For purposes of  
12 subsection B above a material increase shall mean an increase of 5 percent or more, or an  
13 increase in 10,000 square feet or more, whichever is less.

14           (3)     The amendments in Section 415.1 315.1 to the way median income is calculated  
15 apply to any housing project that has not received a first site or building permit by the effective  
16 date of Section 415.1 et seq. this Ordinance.

17           (4)     Section 415.1 et seq. This Ordinance shall apply to all housing projects of 5 to 9  
18 units that filed their first application, including an environmental evaluation application or any  
19 other Planning Department application on or after July 18, 2006.

20           (c)     Section 415.1 et seq. This Ordinance shall not apply to:

21           (1)     That portion of a housing project located on property owned by the United  
22 States or any of its agencies or leased by the United States or any of its agencies for a period  
23 in excess of 50 years, with the exception of such property not used exclusively for a  
24 governmental purpose;

1 (2) That portion of a housing project located on property owned by the State of  
2 California or any of its agencies, with the exception of such property not used exclusively for a  
3 governmental or educational purpose; or

4 (3) That portion of a housing project located on property under the jurisdiction of the  
5 San Francisco Redevelopment Agency or the Port of San Francisco where the application of  
6 Section 415.1 et seq. this Ordinance is prohibited by California or local law.

7 (d) — ~~Waiver or Reduction:~~

8 (1) — ~~A project applicant of any project subject to the requirements in this Program may  
9 appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based  
10 upon the absence of any reasonable relationship or nexus between the impact of development and  
11 either the amount of the fee charged or the inclusionary requirement.~~

12 (2) — ~~A project applicant subject to the requirements of this Program who has received an  
13 approved building permit, conditional use permit or similar discretionary approval and who submits a  
14 new or revised building permit, conditional use permit or similar discretionary approval for the same  
15 property may appeal for a reduction, adjustment or waiver of the requirements with respect to the  
16 number of lots or square footage of construction previously approved.~~

17 (3) — ~~Any such appeal shall be made in writing and filed with the Clerk of the Board no later  
18 than 15 days after the date the Planning Department sends notice to the project applicant of the  
19 number of affordable units required as provided in Section 315.4(a) and 315.5(a). The appeal shall set  
20 forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board  
21 of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The  
22 appellant shall bear the burden of presenting substantial evidence to support the appeal, including  
23 comparable technical information to support appellant's position. The decision of the Board shall be by  
24 a simple majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any change  
25 in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary~~

1 ~~requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall~~  
2 ~~promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.~~

3 ~~(d) (e)~~ For projects that have received a first site or building permit prior to the effective  
4 date of Section 415.1 et seq. this legislation, the requirements in effect prior to the effective date  
5 of Section 415.1 et seq. this Ordinance shall apply.

6 SEC. 415.4 IMPOSITION OF REQUIREMENTS.

7 (a) Determination of Requirements. The Department shall determine the applicability of  
8 Section 415.1 et seq. to any development project requiring a building or site permit and, if Section  
9 415.1 is applicable, shall impose any such requirements as a condition of approval for issuance of the  
10 building or site permit. The project sponsor shall supply any information necessary to assist the  
11 Department in this determination.

12 (b) Notice to Development Fee Collection Unit of Requirements. After the Department has  
13 made its final determination regarding the application of the affordable housing requirements to a  
14 development project pursuant to Section 415.1 et seq., it shall immediately notify the Development Fee  
15 Collection Unit at DBI in addition to the other information required by Section 402(b) of this Article.

16 (c) Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site permit  
17 for a development project subject to the requirements of Section 415.1 et seq., the sponsor of the  
18 development project shall select one of the four options listed below to fulfill their affordable housing  
19 requirements and notify the Department of their choice:

20 (1) Construct on-site units affordable to qualifying households pursuant to the requirements  
21 of Section 415.5.

22 (2) Construct off-site units affordable to qualifying households at an alternative site within  
23 the City and County of San Francisco pursuant to Section 415.6.

24 (3) Pay an in-lieu fee to the Development Fee Collection Unit at DBI pursuant to Section  
25 415.7.

1           (4) Provide any combination of on-site units as provided in Section 415.5, off-site units as  
2 provided in Section 415.6, or payment of an in-lieu fee as provided in Section 415.7, provided that the  
3 sponsor constructs or pays the fee at the appropriate percentage or fee level required for that option.

4           (d) Department Notice to Development Fee Collection Unit of Sponsor's Choice. After the  
5 sponsor has notified the Department of their choice to fulfill the affordable housing requirements of  
6 Section 415.1 et seq., the Department shall immediately notify the Development Fee Collection Unit at  
7 DBI of the sponsor's choice.

8           (e) Development Fee Collection Unit Notice to Department Prior to Issuance of the First  
9 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing  
10 or electronically to the Department prior to issuing the first certificate of occupancy for any  
11 development project subject to Section 415.1 et seq. that has elected to fulfill all or part of its  
12 requirement with an option other than payment of an in-lieu fee. If the Department notifies the Unit at  
13 such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny and all  
14 certificates of occupancy until the subject project is brought into compliance with the requirements of  
15 Section 415.1 et seq.

16           (f) Process for Revisions of Determination of Requirements. In the event that the  
17 Department or the Commission takes action affecting any development project subject to Section 415.1  
18 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of  
19 Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) shall be  
20 followed.

21           ~~SEC. 315.4. ON-SITE HOUSING REQUIREMENT AND BENEFITS.~~

22           ~~Except as provided in Section 315.4(e), all housing projects subject to this Program through the~~  
23 ~~application of Section 315.3 shall be required to construct on-site units subject to the following~~  
24 ~~requirements:~~



1            SEC. 415.5 COMPLIANCE THROUGH PROVISION OF ON-SITE AFFORDABLE

2            HOUSING.

3            If the sponsor elects, pursuant to Section 415.4(c), to provide on-site units to satisfy the  
4            requirements of Section 415.1 et seq., the development project shall satisfy the following requirements:

5            (a)     Number of Units:

6            (1)     (A) For any housing development of any height that is located in an area with a  
7            specific inclusionary housing requirement, the more specific inclusionary housing requirement  
8            shall apply. ~~In addition, the following provisions shall apply only to the following Area Plans as~~  
9            ~~provided below:~~

10           ~~(i) — Market and Octavia Area Plan: The requirements of Sections 315 through 315.9 shall~~  
11           ~~apply in the Plan Area subject to the following:~~

12           ~~An additional affordable housing requirement shall apply in the Market and Octavia Plan Area~~  
13           ~~as follows:~~

14           ~~Definitions. The definitions in Section 326.2 and 318.2 shall apply.~~

15           ~~Amount of fee: All projects that have not received Planning Department or Commission~~  
16           ~~approval as of the effective date of this legislation and that are subject to the Residential Inclusionary~~  
17           ~~Affordable Housing Program shall pay an additional affordable housing fee per square foot of~~  
18           ~~Residential Space Subject to the Community Improvements Impact Fee as follows; \$8.00 in the Van~~  
19           ~~Ness Market Special Use District; \$4.00 in the NCT District; and \$0.00 in the RTO District. A project~~  
20           ~~applicant shall not pay a fee for any square foot of space designated as a below market rate unit under~~  
21           ~~this inclusionary affordable housing program or any other unit that is designated as an affordable~~  
22           ~~housing unit under a Federal, State, or local restriction in a manner that maintains affordability for a~~  
23           ~~term no less than 50 years.~~

24           ~~Timing of payment: The fee shall be paid before the City issues a first certificate of occupancy~~  
25           ~~for the project.~~

1            *Use of Fee:* The additional affordable housing requirement specified in this Section for the  
2 Market and Octavia Plan Area shall be paid into the Citywide Affordable Housing Fund, but the funds  
3 shall be separately accounted for. MOH shall expend the funds according to the following priorities:  
4 First, to increase the supply of housing affordable to qualifying households in the Market and Octavia  
5 Plan Area; second, to increase the supply of housing affordable to qualifying households within 1 mile  
6 of the boundaries of the Plan Area; third, to increase the supply of housing affordable to qualifying  
7 households in the City and County of San Francisco. The funds may also be used for monitoring and  
8 administrative expenses subject to the process described in Section 315.6(e).

9            *Other fee provisions:* This additional affordable housing fee shall be subject to the following  
10 provisions of Sections 326 et seq.; the inflation adjustment provisions of Section 326.3(d); the waiver  
11 and reduction provisions of Section 326.3(h); the lien proceedings in Section 326.4; and the refund  
12 provisions of Section 326.5. This additional affordable housing fee may not be met through the in-kind  
13 provision of community improvements or Community Facilities (Mello-Roos) financing options of  
14 Sections 326.3(e) and (f).

15            *Findings:* The Board of Supervisors hereby finds that the additional affordable housing  
16 requirements of this Section are supported by the Nexus Study performed by Keyser Marston and  
17 Associates referenced in Section 315.2(12) and found in Board File No. 081152. The Board of  
18 Supervisors has reviewed the study and staff analysis and report of the study and, on that basis finds  
19 that the study supports the current inclusionary housing requirements combined with the additional  
20 affordable housing fee. Specifically, the Board finds that the study: identifies the purpose of the  
21 additional fee to mitigate impacts on the demand for affordable housing in the City; identifies the use to  
22 which the additional fee is to be put as being to increase the City's affordable housing supply; and  
23 establishes a reasonable relationship between the use of the additional fee for affordable housing and  
24 the need for affordable housing and the construction of new market rate housing. Moreover, the Board  
25 finds that the current inclusionary requirements combined with the additional fee are less than the cost

1 ~~of mitigation and do not include the costs of remedying any existing deficiencies. The Board also finds~~  
2 ~~that the study establishes that the current inclusionary requirements and additional fee do not duplicate~~  
3 ~~other City requirements or fees.~~

4 ~~Furthermore, the Board finds that generally an account has been established, funds~~  
5 ~~appropriated, and a construction schedule adopted for affordable housing projects funded through the~~  
6 ~~Inclusionary Housing program and the additional fee or that the in lieu fees and the additional fee will~~  
7 ~~reimburse the City for expenditures on affordable housing that have already been made.~~

8 ~~Furthermore, the Board finds that a major Market and Octavia Area Plan objective is to direct~~  
9 ~~new market rate housing development to the area. That new market rate development will greatly out~~  
10 ~~number both the number of units and potential new sites within the plan area for permanently~~  
11 ~~affordable housing opportunities. The City and County of San Francisco has adopted a policy in its~~  
12 ~~General Plan to meet the affordable housing needs of its general population and to require new~~  
13 ~~housing development to produce sufficient affordable housing opportunities for all income groups, both~~  
14 ~~of which will not be met by the projected housing development in the plan area. In addition, the "Draft~~  
15 ~~Residential Nexus Analysis City and County of San Francisco" of December 2006 indicates that market~~  
16 ~~rate housing itself generates additional lower income affordable housing needs for the workforce~~  
17 ~~needed to serve the residents of the new market rate housing proposed for the plan area. In order to~~  
18 ~~meet the demand created for affordable housing by the specific policies of the Plan and to be consistent~~  
19 ~~with the policy of the City and County of San Francisco it is found that an additional affordable~~  
20 ~~housing fee need be included on all market rate housing development in the Plan Area with priority for~~  
21 ~~its use being given to the Plan area.~~

22 ~~(ii) — Eastern Neighborhoods Project Area: The requirements of Sections 415.315 through~~  
23 ~~315.9 and 319 shall apply in the Eastern Neighborhoods Plan Area subject to the following and subject~~  
24 ~~to any stated exceptions elsewhere in this Code, including the specific provisions in Section 319:~~

25 ~~Definitions:~~

1 *"Gross square footage" shall have the meaning set forth in Section 102.9.*

2 *"Development Application" shall have the meaning set forth in Section 175.6.*

3 *"Eastern Neighborhood Controls" shall have the meaning set forth in Section 175.6.*

4 *Application. The option described in this subsection (ii) shall only be provided to development projects*  
5 *that are subject to the Eastern Neighborhood Controls as defined in Section 175.6 (e), and consist of 20*  
6 *units or less or less than 25,000 gross square feet. Amount of Fee. All projects subject to this subsection*  
7 *may choose to pay a square foot in lieu fee instead of the in lieu fee provided for in Section 315.6 as*  
8 *follows. If this option is selected, the project applicant shall pay \$40.00 per gross square foot of net*  
9 *new residential development. The calculation of gross square feet shall not include nonresidential uses,*  
10 *including any retail, commercial, or PDR uses, and all other space used only for storage and services*  
11 *necessary to the operation or maintenance of the building itself.*

12 *Timing of Payment. The project applicant shall pay the fee prior to issuance by DBI of the first*  
13 *site or building permit for the project, whichever applies. At the project applicant's option, it may*  
14 *choose to pay only 50% of the fee prior to issuance by DBI of the first site or building permit and, prior*  
15 *to issuance of the first site or building permit, the City shall impose a lien on the property for the*  
16 *remaining 50% of the fee through the procedures set forth in Section 315.6(f) except that no interest*  
17 *will accrue for the first twelve months from the issuance of the first construction document or site or*  
18 *building permit for the project. The project applicant shall pay the remaining 50% of the fee prior to*  
19 *issuance by DBI of a first certificate of occupancy. When 100% of the fee is paid, including interest if*  
20 *applicable, the City shall remove the lien.*

21 *Use of Fee. The fee shall be paid into the Citywide Affordable Housing Fund, but the funds shall*  
22 *be separately accounted for. MOH shall expend the funds according to the following priorities: First,*  
23 *to increase the supply of housing affordable to qualifying households in the Eastern Neighborhoods*  
24 *Project Areas; second, to increase the supply of housing affordable to qualifying households within 1*  
25 *mile of the boundaries of the Eastern Neighborhoods Project Areas; third, to increase the supply of*

1 ~~housing affordable to qualifying households in the City and County of San Francisco. The funds may~~  
2 ~~also be used for monitoring and administrative expenses subject to the process described in Section~~  
3 ~~315.6(e).~~

4 *Findings. The Board of Supervisors hereby finds that the fee provisions of this Section are*  
5 *equivalent to or less than the fees for developments of over 20 units previously adopted by the Board in*  
6 *Ordinance No. 051685 and 060529 and are also supported by the Nexus Study performed by Keyser*  
7 *Marston and Associates referenced in Section 315.2(12) and found in Board File No. 081152. The*  
8 *Board of Supervisors has reviewed the study and staff analysis prepared by the Mayor's Office of*  
9 *Housing dated July 24, 2008 in Board File No. 081152 and on that basis finds that the study supports*  
10 *the current proposed changes to the inclusionary housing requirements for projects of 20 units or less*  
11 *in the Eastern Neighborhood Area Plan. Specifically, the Board finds that the study and staff memo:*  
12 *identifies the purpose of the additional fee to mitigate impacts on the demand for affordable housing in*  
13 *the City; identifies the use to which the additional fee is to be put as being to increase the City's*  
14 *affordable housing supply; and establishes a reasonable relationship between the use of the additional*  
15 *fee for affordable housing and the need for affordable housing and the construction of new market rate*  
16 *housing. Moreover, the Board finds that the new inclusionary requirements are less than the cost of*  
17 *mitigation and do not include the costs of remedying any existing deficiencies. The Board also finds*  
18 *that the study establishes that the inclusionary requirements do not duplicate other City requirements*  
19 *or fees.*

20 *Furthermore, the Board finds that generally an account has been established, funds*  
21 *appropriated, and a construction schedule adopted for affordable housing projects funded through the*  
22 *Inclusionary Housing program and the in lieu fees will reimburse the City for expenditures on*  
23 *affordable housing that have already been made.*

24 *Furthermore, the Board finds that small scale development faces a number of challenges in the*  
25 *current development climate, including limited access to credit and often, a higher land cost per unit*

1 ~~for the small sites on which they develop. Because of these and other variations from larger-scale~~  
2 ~~development, they operate under a somewhat unique development model which cannot be fully~~  
3 ~~encapsulated within the constraints of the Eastern Neighborhoods Financial Analysis, prepared to~~  
4 ~~assess the financial feasibility of increasing housing requirements and impact fees in the Plan Areas.~~  
5 ~~To address these challenges, the Board finds that a number of slight modifications to the affordable~~  
6 ~~housing requirements of the Eastern Neighborhoods, to apply to small projects (defined as 20 units or~~  
7 ~~fewer, or less than 25,000 gross square feet) are appropriate.~~

8 (B) Buildings 120 feet in height and under or buildings of over 120 feet in height that  
9 do not meet the criteria in subsection (C) below: Except as provided in Subsection (C) below,  
10 the *Planning* Department shall require for housing projects covered by Section 415.3(a)(1)  
11 ~~315.3(a)(1)~~, as a condition of *Planning* Department approval of a project's building permit, and  
12 by Section 415.3 ~~315.3~~(a)(2), (3) and (4), as a Condition of Approval of a conditional use or  
13 planned unit development permit or as a condition of *Planning* Department approval of a  
14 live/work project, that 15 percent of all units constructed on the project site shall be affordable  
15 to qualifying households so that a project applicant must construct .15 times the total number  
16 of units produced in the principal project beginning with the construction of the fifth unit. If the  
17 total number of units is not a whole number, the project applicant shall round up to the nearest  
18 whole number for any portion of .5 or above.

19 ~~The Planning Department shall provide written notice by mail to the project applicant of the~~  
20 ~~number of affordable units which shall be required within 30 days of approval by the Planning~~  
21 ~~Department or Planning Commission.~~

22 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above,  
23 the requirements of this Subsection shall apply to any project that is over 120 feet in height  
24 and does not require a Zoning Map amendment or Planning Code text amendment related to  
25 its project approvals which (i) results in a net increase in the number of permissible residential

1 units, or (ii) results in a material increase in the net permissible residential square footage as  
2 defined in Section ~~415.3(b)(2)~~ ~~315.3(b)(2)~~ or has not received or will not receive a ~~z~~Zoning  
3 ~~m~~Map amendment or Planning Code text amendment as part of an Area Plan adopted after  
4 January 1, 2006 which (i) results in a net increase in the number of permissible residential  
5 units, or (ii) results in a material increase in the net permissible residential square footage as  
6 defined in Section ~~415.3(b)(2)~~ ~~315.3(b)(2)~~. The ~~Planning~~ Department shall require for housing  
7 projects covered by this Subsection and Section ~~415.3~~ ~~315.3(a)(1)~~, as a condition of ~~Planning~~  
8 Department approval of a project's building permit, or by this Subsection and by Section ~~415.3~~  
9 ~~315.3(a)(2)~~, (3) and (4), as a Condition of Approval of a conditional use or planned unit  
10 development permit or as a condition of ~~Planning~~ Department approval of a live/work project,  
11 that 12 percent of all units constructed on the project site shall be affordable to qualifying  
12 households so that a project applicant must construct .12 times the total number of units  
13 produced in the principal project beginning with the construction of the fifth unit. If the total  
14 number of units is not a whole number, the project applicant shall round up to the nearest  
15 whole number for any portion of .5 or above. Consistent with the conclusions of the ~~MOH~~  
16 ~~Mayor's Office of Housing~~ study authorized in Section ~~415.9(e)~~ ~~315.8(e)~~, ~~MOH~~ ~~the Mayor's Office~~  
17 ~~of Housing~~ shall recommend and the Board of Supervisors shall consider whether the  
18 requirements of this Subsection for buildings of over 120 feet in height shall continue or expire  
19 after approximately five years.

20 ~~The Planning Department shall provide written notice by mail to the project applicant of the~~  
21 ~~number of affordable units which shall be required within 30 days of approval by the Planning~~  
22 ~~Department or Planning Commission. This notice shall also be sent to project applicants who elect to~~  
23 ~~pay an in-lieu fee.~~

24 (2) If the principal project has resulted in demolition, conversion, or removal of  
25 affordable housing units renting or selling to households at income levels and/or for a rental

1 rate or sales price below corresponding income thresholds for units affordable to qualifying  
2 households, the *Planning* Commission shall require that the project applicant replace the  
3 number of affordable units removed with units of a comparable number of bedrooms or  
4 provide that 15 percent of all units constructed as part of the new project shall be affordable to  
5 qualifying households, whichever is greater.

6 (b) Timing of Construction: On-site inclusionary housing required by this Section  
7 415.5 ~~315.4~~ must be constructed, completed, and ready for occupancy no later than the market  
8 rate units in the principal project.

9 (c) Type of Housing: ~~The type of affordable housing needed in San Francisco is~~  
10 ~~documented in the City's Consolidated Plan and the Residence Element of the General Plan.~~ In  
11 general, affordable units constructed under this Section 415.5 ~~315.4~~ shall be comparable in  
12 number of bedrooms, exterior appearance and overall quality of construction to market rate  
13 units in the principal project. ~~The~~ A Notice of Special Restrictions or Conditions of Approval shall  
14 be recorded prior to issuance of the building or site permit and shall include a specific specify the  
15 number, location and sizes for all affordable ~~of~~ units required under this Subsection. ~~at specified unit~~  
16 ~~sizes for affordable units.~~ The square footage of affordable units and interior features in  
17 affordable units do not need to be same as or equivalent to those in market rate units in the  
18 principal project, so long as they are of good quality and are consistent with then-current  
19 standards for new housing. Where applicable, parking shall be offered to the affordable units  
20 subject to the terms and conditions of the Department's policy on unbundled parking for  
21 affordable housing units as specified in the Procedures Manual and amended from time to  
22 time. Unless provided otherwise by MOH ~~the Mayor's Office of Housing~~ in writing, if the units in  
23 the market rate portion of the development are ownership units, then the affordable units shall  
24 be ownership units and if the market rate units are rental units, then the affordable units shall  
25 be rental units.



1 (d) Marketing the Units: ~~MOH The Mayor's Office of Housing~~ shall be responsible for  
2 overseeing and monitoring the marketing of affordable units under this Section. In general, the  
3 marketing requirements and procedures shall be contained in the Procedures Manual as  
4 amended from time to time and shall apply to the affordable units in the project. ~~MOH The~~  
5 ~~Mayor's Office of Housing~~ may develop occupancy standards for units of different bedroom  
6 sizes in the Procedures Manual in order to promote an efficient allocation of affordable units.  
7 ~~MOH The Mayor's Office of Housing~~ may require in the Procedures Manual that prospective  
8 purchasers complete homebuyer education training or fulfill other requirements. ~~MOH The~~  
9 ~~Mayor's Office of Housing~~ shall develop a list of minimum qualifications for marketing firms that  
10 market affordable units under ~~Section 415.1 et seq. this ordinance~~, referred to the Procedures  
11 Manual as Below Market Rate (BMR units). ~~Within 3 months from the effective date of this~~  
12 ~~legislation, the Mayor's Office of Housing shall recommend to the Planning Commission that these~~  
13 ~~minimum qualifications be published in the Procedures Manual such that, upon approval of the~~  
14 ~~qualifications by the Planning Commission, no developer marketing units under the Inclusionary~~  
15 ~~Housing Program shall be able to market BMR units except through a firm meeting all of the minimum~~  
16 ~~qualifications. For purposes of this ordinance, any developer that has not yet submitted a marketing~~  
17 ~~plan to the Mayor's Office of Housing by the date of Planning Commission approval of the~~  
18 ~~qualifications shall be required to comply with this section.~~ The Notice of Special Restrictions or  
19 Conditions of Approval shall specify that the marketing requirements and procedures  
20 contained in the Procedures Manual as amended from time to time, shall apply to the  
21 affordable units in the project.

22 (1) Lottery: At the initial offering of affordable units in a housing project, ~~MOH the~~  
23 ~~Mayor's Office of Housing~~ must require the use of a public lottery approved by ~~MOH the Mayor's~~  
24 ~~Office of Housing~~ to select purchasers or tenants. ~~MOH The Mayor's Office of Housing~~ shall also  
25 hold a general public lottery and maintain and utilize a list generated from this lottery or utilize

1 a list generated from a recent lottery at another similar housing project to fill spaces in units  
2 that become available for re-sale or occupancy in any housing project subject to this  
3 ordinance after the initial offering. The list shall be updated from time to time but in no event  
4 less than annually to ensure that it remains current.

5 (2) Preferences: MOH ~~The Mayor's Office of Housing~~ shall create a lottery system that  
6 gives preference to people who live or work in San Francisco. MOH shall propose policies and  
7 procedures for implementing this preference to the *Planning* Commission for inclusion in the  
8 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
9 households equally in allocating affordable units under this Program.

10 ~~(e) — Alternatives: The project sponsor may elect to satisfy the requirements of Section 315.4~~  
11 ~~by one of the alternatives specified in this Section. The project sponsor has the choice between the~~  
12 ~~alternatives and the Planning Commission may not require a specific alternative. The project sponsor~~  
13 ~~must elect an alternative before it receives project approvals from the Planning Commission or~~  
14 ~~Planning Department and that alternative will be a condition of project approval. Notwithstanding the~~  
15 ~~foregoing, if a project sponsor elects an alternative other than the on-site alternative, the project~~  
16 ~~sponsor still has the option to choose the on-site alternative up to the issuance of the first site or~~  
17 ~~building permit. If a project sponsor fails to elect an alternative before project approval by the~~  
18 ~~Planning Commission or Planning Department, the provisions of Section 315.4 shall apply. The~~  
19 ~~alternatives are as follows:~~

20 ~~(1) — Constructing units affordable to qualifying households at an alternative site within the~~  
21 ~~City and County of San Francisco pursuant to the requirements of Section 315.5.~~

22 ~~(2) — Paying an in lieu fee to the Mayor's Office of Housing pursuant to the requirements of~~  
23 ~~Section 315.6.~~

24 ~~(3) — Any combination of construction of on-site units as provided in Section 315.4, off-site~~  
25 ~~units as provided in Section 315.5, or payment of an in lieu fee as provided in Section 315.6, provided~~

1 ~~that the project applicant constructs or pays the fee at the appropriate percentage or fee level required~~  
2 ~~for that option.~~

3 ~~(4) — Using California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds under~~  
4 ~~the requirements of Section 315.5(g).~~

5 ~~(e) (f)~~ Benefits: If the project applicant elects to satisfy the inclusionary housing  
6 requirements through the production of on-site inclusionary housing in this Section 415.5  
7 ~~315.4~~, the project applicant ~~who filed an application on or after June 18, 2001~~ shall ~~at his or her~~  
8 ~~option~~, be eligible to receive a refund for only that portion of the housing project which is  
9 affordable for the following fees: a conditional use or other fee required by ~~Planning Code~~  
10 Section 352 ~~of this Code~~, if applicable; an environmental review fee required by Administrative  
11 Code Section 31.46B, if applicable; a building permit fee required by the Building Code and by  
12 ~~Planning Code~~ Section 355 ~~of this Code~~ for the portion of the housing project that is affordable.  
13 The project applicant shall pay the building fee for the portion of the project that is market-  
14 rate.

15 The Controller shall refund fees from any appropriated funds to the project applicant on  
16 application by the project applicant. The application must include a copy of the certificate of  
17 occupancy for all units affordable to a qualifying household required by the Inclusionary  
18 Affordable Housing Program. It is the policy of the Board of Supervisors to appropriate money  
19 for this purpose from the General Fund.

20 ~~(f) — Affordable units constructed under Section 415.1 et seq. shall not have received~~  
21 ~~development subsidies from any Federal, State or local program established for the purpose of~~  
22 ~~providing affordable housing, and shall not be counted to satisfy any affordable housing requirement.~~

23 ~~(g) — Notwithstanding the provisions of Section 415.5(f) above, a sponsor may use California~~  
24 ~~Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund its obligations under this~~  
25 ~~Section 415.5 as long as it provides 20 percent of the units as affordable at 50 percent of area media~~

1 income for on-site housing. All units provided under this Subsection must meet all of the requirements  
2 of Section 415.1 et seq. and the Procedures Manual for on-site housing.

3 SEC. ~~415.6~~ 315.5. COMPLIANCE THROUGH ~~PAYMENT TO HOUSING DEVELOPER~~  
4 PROVISION OF OFF-SITE AFFORDABLE HOUSING.

5 If the project sponsor applicant elects, pursuant to Section ~~415.4(c)~~ 315.4(e), ~~that the~~  
6 ~~project applicant will build to provide~~ off-site units to satisfy the requirements of Section 415.1 et  
7 seq. this Program, the development project applicant shall meet the following requirements:

8 (a) Number of Units: The number of units constructed off-site shall be as follows:

9 (1) (A) For any housing development of any height that is located in an area with a  
10 specific inclusionary housing requirement, the more specific off-site inclusionary housing  
11 requirement shall apply.

12 (B) Buildings of 120 feet and under in height or buildings of over 120 feet in height  
13 that do not meet the criteria in ~~s~~Subsection (C) below: Except as provided in Subsection (A),  
14 ~~the~~ for projects described in Section ~~415.3~~ 315.3(a)(1), (2), (3), and (4) 20 percent so that a  
15 project applicant must construct .20 times the total number of units produced in the principal  
16 project beginning with the construction of the fifth unit. If the total number of units is not a  
17 whole number, the project applicant shall round up to the nearest whole number for any  
18 portion of .5 or above. ~~The Planning Department shall provide written notice by mail to the project~~  
19 ~~applicant of the number of affordable units which shall be required within 30 days of approval by the~~  
20 ~~Planning Department or Planning Commission. This notice shall also be sent to project applicants who~~  
21 ~~elect to pay an in-lieu fee.~~

22 (C) Buildings of over 120 feet in height. Except as provided in subsection (A) above,  
23 the requirements of this Subsection shall apply to any project that is over 120 feet in height  
24 and does not require a Zoning Map amendment or Planning Code text amendment related to  
25 its project approvals which (i) results in a net increase in the number of permissible residential

1 units, or (ii) results in a material increase in the net permissible residential square footage as  
2 defined in Section ~~415.3~~ 315.3(b)(2); or has not received or will not receive a ~~Zoning~~ ~~m~~Map  
3 amendment or Planning Code text amendment as part of an Area Plan adopted after January  
4 1, 2006 which (i) results in a net increase in the number of permissible residential units, or (ii)  
5 results in a material increase in the net permissible residential square footage as defined in  
6 Section ~~415.3~~ 315.3(b)(2). The ~~Planning~~ Department shall require for housing projects covered  
7 by this Subsection and Section ~~415.3~~ 315.3(a)(1), as a condition of Planning Department  
8 approval of a project's building permit, or by this Subsection and by Section ~~415.3~~ 315.3(a)(2),  
9 (3) and (4), as a Condition of Approval of a conditional use or planned unit development  
10 permit or as a condition of ~~Planning~~ Department approval of a live/work project, that 17  
11 percent of all units constructed on the project site shall be affordable to qualifying households  
12 so that a project applicant must construct .17 times the total number of units produced in the  
13 principal project beginning with the construction of the fifth unit. If the total number of units is  
14 not a whole number, the project applicant shall round up to the nearest whole number for any  
15 portion of .5 or above. Consistent with the conclusions of the ~~MOH Mayor's Office of Housing~~  
16 study authorized in Section ~~415.9(e)~~ 315.8(e), ~~MOH the Mayor's Office of Housing~~ shall  
17 recommend and the Board of Supervisors shall consider whether the requirements of this  
18 Subsection for buildings of over 120 feet in height shall continue or expire after approximately  
19 five years. ~~The Planning Department shall provide written notice by mail to the project applicant of~~  
20 ~~the number of affordable units which shall be required within 30 days of approval by the Planning~~  
21 ~~Department or Planning Commission. This notice shall also be sent to project applicants who elect to~~  
22 ~~pay an in-lieu fee.~~

23 (b) Timing of Construction: The project applicant shall insure that the off-site units  
24 are constructed, completed, and ready for occupancy no later than the market rate units in the  
25 principal project.

1 (c) Location of off-site housing: The project applicant must insure that off-site units  
2 are located within one mile of the principal project.

3 (d) Type of Housing: ~~The type of affordable housing needed in San Francisco is~~  
4 ~~documented in the City's Consolidated Plan and the Residence Element of the General Plan.~~ New  
5 affordable rental housing and ownership housing affordable to households earning less than  
6 the median income is greatly needed in San Francisco. The *Planning* Department shall  
7 develop Quality Standards for Off-Site Affordable Housing Units and recommend such  
8 standards to the *Planning* Commission for adoption as part of the Procedures Manual. All off-  
9 site units constructed under this Section must be provided as rental housing for the life of the  
10 project or, if they are ownership units, must be affordable to households earning no more than  
11 80 percent of the median income for the City and County of San Francisco. Nothing in this  
12 ~~s~~Section shall limit a developer from meeting the requirements of this Section through the  
13 construction of units in a limited equity or land trust form of ownership if such units otherwise  
14 meet all of the requirements for off-site housing. In general, affordable units constructed under  
15 this Section 415.6 ~~315.5~~ shall be comparable in number of bedrooms, exterior appearance and  
16 overall quality of construction to market rate units in the principal project. The total square  
17 footage of the off-site affordable units constructed under this Section 415.6 ~~315.5~~ shall be no  
18 less than the calculation of the total square footage of the on-site market-rate units in the  
19 principal project multiplied by the relevant on-site percentage requirement for the project  
20 specified in Section 415.5 ~~315.4~~. The Notice of Special Restrictions or Conditions of Approval  
21 shall include a specific number of units at specified unit sizes - including number of bedrooms  
22 and minimum square footage - for affordable units. The interior features in affordable units  
23 need not be the same as or equivalent to those in market rate units in the principal project, so  
24 long as they are consistent with the Planning Department's Quality Standards for Off-Site  
25 Affordable Housing Units found in the Procedures Manual. Where applicable, parking shall be

1 offered to the affordable units subject to the terms and conditions of the Department's policy  
 2 on unbundled parking for affordable housing units as specified in the Procedures Manual and  
 3 amended from time to time. If the residential units in the principal project are live/work units  
 4 which do not contain bedrooms or are other types of units which do not contain bedrooms  
 5 separated from the living space, the off-site units shall be comparable in size according to the  
 6 following equivalency calculation between live/work and units with bedrooms:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1,100 square feet)	3
3 (1,101 to 1,300 square feet)	4
4 (More than 1,300 square feet)	5

17 (e) Marketing the Units: ~~MOH The Mayor's Office of Housing~~ shall be responsible for  
 18 overseeing and monitoring the marketing of affordable units under this Section. In general, the  
 19 marketing requirements and procedures shall be contained in the Procedures Manual as  
 20 amended from time to time and shall apply to the affordable units in the project. ~~MOH The~~  
 21 ~~Mayor's Office of Housing~~ may develop occupancy standards for units of different bedroom  
 22 sizes in the Procedures Manual in order to promote an efficient allocation of affordable units.  
 23 ~~MOH The Mayor's Office of Housing~~ may require in the Procedures Manual that prospective  
 24 purchasers complete homebuyer education training or fulfill other requirements. ~~MOH The~~  
 25 ~~Mayor's Office of Housing~~ shall develop a list of minimum qualifications for marketing firms that

1 market affordable units under Section 415.1 et seq. this ordinance, referred to the Procedures  
2 Manual as Below Market Rate (BMR units). ~~Within three months from the effective date of this~~  
3 ~~legislation, the Mayor's Office of Housing shall recommend to the Planning Commission that these~~  
4 ~~minimum qualifications be published in the Procedures Manual such that, upon approval of the~~  
5 ~~qualifications by the Planning Commission, no developer marketing units under the Inclusionary~~  
6 ~~Housing Program shall be able to market BMR units except through a firm meeting all of the minimum~~  
7 ~~qualifications. For purposes of this ordinance, any developer that has not yet submitted a marketing~~  
8 ~~plan to the Mayor's Office of Housing by the date of Planning Commission approval of the~~  
9 ~~qualifications shall be required to comply with this section.~~ The Notice of Special Restrictions or  
10 Conditions of Approval shall specify that the marketing requirements and procedures  
11 contained in the Procedures Manual as amended from time to time, shall apply to the  
12 affordable units in the project.

13 (1) Lottery: At the initial offering of affordable units in a housing project, MOH ~~the~~  
14 ~~Mayor's Office of Housing~~ must require the use of a public lottery approved by MOH to select  
15 purchasers or tenants. MOH ~~The Mayor's Office of Housing~~ shall also hold a general public  
16 lottery and maintain and utilize a list generated from this lottery or utilize a list generated from  
17 a recent lottery at another similar housing project to fill spaces in units that become available  
18 for re-sale or occupancy in any housing project subject to Section 415.1 et seq. this Ordinance  
19 after the initial offering. The list shall be updated from time to time but in no event less than  
20 annually to insure that it remains current.

21 (2) Preferences: MOH ~~The Mayor's Office of Housing~~ shall create a lottery system that  
22 gives preference to people who live or work in San Francisco. MOH shall propose policies and  
23 procedures for implementing this preference to the ~~Planning~~ Commission for inclusion in the  
24 Procedures Manual. Otherwise, it is the policy of the Board of Supervisors to treat all  
25 households equally in allocating affordable units under this Program.



1 (f) Affordable units constructed under Section ~~415.6~~ ~~315.5~~ shall not have received  
2 development subsidies from any Federal, State or local program established for the purpose  
3 of providing affordable housing, and shall not be counted to satisfy any affordable housing  
4 requirement for the off-site development.

5 (g) Notwithstanding the provisions of Section ~~415.6(f)~~ ~~315.5(f)~~ above, a developer  
6 may use California Debt Limit Allocation Committee (CDLAC) tax-exempt bonds to help fund  
7 its obligations under Section 415.1 et seq. ~~this ordinance~~ as long as it provides 20 percent of the  
8 units as affordable at 50 percent of area median income for on-site housing or 25 percent of  
9 the units as affordable at 50 percent of area median income for off-site housing. Except as  
10 provided in this subsection, all units provided under this Section must meet all of the  
11 requirements of Section 415.1 et seq. ~~this ordinance~~ and the Procedures Manual for either on- or  
12 off-site housing.

13 SEC. ~~415.7~~ ~~315.6~~. COMPLIANCE ~~THROUGH~~ BY PAYMENT OF AN IN-LIEU FEE.

14 If the project ~~sponsor applicant~~ elects, pursuant to Section ~~415.4(c)~~, ~~315.4(e)(2)~~ ~~that the~~  
15 ~~project applicant will to~~ pay an in lieu fee to satisfy the requirements of Section 415.1 et seq. ~~this~~  
16 Program, the ~~sponsor project applicant~~ shall pay the in-lieu fee to the Development Fee Collection  
17 Unit at DBI for use by MOH prior to issuance of the first construction document , with an option for the  
18 project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing  
19 to pay a deferral surcharge that would be deposited into the Citywide Affordable Housing Fund in  
20 accordance with Section 107A.13.3 of the San Francisco Building Code. ~~meet the following~~  
21 requirements:

22 (a) — ~~By paying an in-lieu fee to the Treasurer for use by the Mayor's Office of Housing for~~  
23 ~~the purpose of constructing at an alternate site the type of housing required by Section 315.5 within the~~  
24 ~~City and County of San Francisco.~~

1            ~~(a)(b)~~ Amount of Fee. The amount of the fee ~~which may be paid by the project applicant~~  
2 ~~subject to this Ordinance in lieu of developing and providing housing required by Section 315.4~~ shall  
3 be determined by MOH Mayor's Office of Housing ("MOH") utilizing the following factors:

4            (1)     The number of units required by Section ~~415.6~~ 315.5 ~~if the project applicant were to~~  
5 ~~elect to meet the requirements of this section by off-site housing development.~~ For the purposes of  
6 this ~~s~~Section, the City shall calculate the fee using the direct fractional result of the total  
7 number of units multiplied by the percentage of off-site housing required, rather than rounding  
8 up the resulting figure as required by Section ~~415.5(a)~~ 315.5(a).

9            (2)     The affordability gap using data on the cost of construction of residential housing  
10 from the "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program"  
11 prepared by Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent or  
12 Maximum Purchase Price for the equivalent unit sizes. The ~~Planning~~ Department and MOH  
13 shall update the technical report from time to time as they deem appropriate in order to ensure  
14 that the affordability gap remains current.

15            (3)     No later than July 1 of each year, ~~MOH the Mayor's Office of Housing~~ shall adjust  
16 the in lieu fee payment option and provide a report on its adjustment to the Board of  
17 Supervisors. MOH shall provide notice of any fee adjustment on its website at least 30 days  
18 prior to the adjustment taking effect. ~~MOH The Mayor's Office of Housing~~ is authorized to  
19 develop an appropriate methodology for indexing the fee, based on adjustments in the costs  
20 of constructing housing and in the price of housing in San Francisco. The method of indexing  
21 shall be published in the Procedures Manual.

22            (b)     Notice to Development Fee Collection Unit of Amount Owed. Prior to issuance of the  
23 building or site permit for a development project subject to Section 415.7, MOH shall notify the  
24 Development Fee Collection Unit at DBI electronically or in writing of its calculation of the amount of  
25 the in-lieu fee owed.

1           (c) ~~Within 30 days of determining the amount of the fee to be paid by the applicant, MOH~~  
2 ~~shall transmit the amount of the fee to the Treasurer. Prior to the issuance by DBI of the first site or~~  
3 ~~building permit for the project applicant, whichever applies, the project applicant must notify the~~  
4 ~~Planning Department and MOH in writing that it has paid in full the sum required to the Treasurer. If~~  
5 ~~the project applicant fails by the applicable date to demonstrate to the Planning Department that the~~  
6 ~~project applicant has paid the applicable sum in full to the Treasurer, DBI shall deny any and all site~~  
7 ~~or building permits or certificates of occupancy for the development project until the Planning~~  
8 ~~Department notifies DBI and MOH that such payment has been made.~~

9           (d) ~~Upon payment of the fee in full to the Treasurer and upon request of the project~~  
10 ~~applicant, the Treasurer shall issue a certification that the fee has been paid. The project applicant~~  
11 ~~shall present such certification to the Planning Department, DBI and MOH prior to the issuance by~~  
12 ~~DBI of the first site or building permit or certificate of occupancy for any development subject to this~~  
13 ~~Section. Any failure of the Treasurer, DBI, or Planning Department to give any notice under this~~  
14 ~~Section shall not relieve a project applicant from compliance with this Section. Where DBI~~  
15 ~~inadvertently issues a site or building permit without payment of the fee, DBI shall not issue any~~  
16 ~~certificate of occupancy for the project without notification from the Treasurer that the fee required by~~  
17 ~~this Section has been paid. The procedure set forth in this subsection is not intended to preclude~~  
18 ~~enforcement of the provisions of this section pursuant to any other section of this Code, or other~~  
19 ~~authority under the laws of the State of California.~~

20           (e) (c) Use of In-Lieu Fees. All monies contributed pursuant to this ~~s~~Section shall be  
21 deposited in the special fund maintained by the Controller called the Citywide Affordable  
22 Housing Fund. The receipts in the Fund are hereby appropriated in accordance with law to be  
23 used to (1) increase the supply of housing affordable to qualifying households subject to the  
24 conditions of this Section, and (2) pay the expenses of MOH in connection with monitoring  
25 and administering compliance with the requirements of the Program. MOH is authorized to

1 use funds in an amount not to exceed \$200,000 every 5 years to conduct follow-up studies  
2 under Section ~~415.9(e)~~ ~~315.8(e)~~ and to update the in-lieu fee amounts as described above in  
3 Section ~~415.7(a)~~ ~~315.6(b)~~. All other monitoring and administrative expenses shall be  
4 appropriated through the annual budget process or supplemental appropriation for MOH. The  
5 fund shall be administered and expended by MOH, which shall have the authority to prescribe  
6 rules and regulations governing the Fund which are consistent with this Section.

7 ~~(f)(d) Lien Proceedings. *If, for any reason, the in-lieu fee imposed pursuant to Section 415.7*~~  
8 ~~*remains unpaid following issuance of the first certificate of occupancy, the Development Fee Collection*~~  
9 ~~*Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest*~~  
10 ~~*and any deferral surcharge, a lien against all parcels used for the development project in accordance*~~  
11 ~~*with Section 408 of this Article and Section 107A.13.15 of the San Francisco Building Code. (H)A*~~  
12 ~~*project applicant's failure to comply with the requirements of this Section shall constitute cause for the*~~  
13 ~~*City to record a lien against the development project in the sum of the in-lieu fee required under this*~~  
14 ~~*Ordinance, as adjusted under this Section.*~~

15 ~~(2) — *If, for any reason, the fee imposed pursuant to this Ordinance remains unpaid following*~~  
16 ~~*issuance of the permit, the Treasurer shall initiate proceedings to impose the lien in accordance with*~~  
17 ~~*the procedures set forth in Chapter 10, Article XX of the San Francisco Administrative Code to make*~~  
18 ~~*the entire unpaid balance of the fee, including interest, a lien against all parcels used for the*~~  
19 ~~*development project. The Treasurer shall send all notices required by that Article to the owner of the*~~  
20 ~~*property as well as the sponsor. The Treasurer shall also prepare a preliminary report notifying the*~~  
21 ~~*sponsor of a hearing to confirm such report by the Board of Supervisors at least 10 days before the*~~  
22 ~~*date of the hearing. The report to the sponsor shall contain the sponsor's name, a description of the*~~  
23 ~~*sponsor's development project, a description of the parcels of real property to be encumbered as set*~~  
24 ~~*forth in the Assessor's Map Books for the current year, a description of the alleged violation of this*~~  
25 ~~*Ordinance, and shall fix a time date and place for hearing. The Treasurer shall cause this report to be*~~

1 mailed to the sponsor and each owner of record of the parcels of real property subject to lien. Except  
2 for the release of lien recording fee authorized by Administrative Code Section 10.237, all sums  
3 collected by the Tax Collector pursuant to this Ordinance shall be held in trust by the Treasurer and  
4 deposited in the Citywide Affordable Housing Fund established in Section 313.12.

5 (3) — Any notice required to be given to a sponsor or owner shall be sufficiently given or  
6 served upon the sponsor or owner or all purposes hereunder if personally served upon the sponsor or  
7 owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor  
8 or owner at the official address of the sponsor or owner maintained by the Tax Collector for the  
9 mailing of tax bills or, if no such address is available, to the sponsor at the address of the development  
10 project, and to the applicant for the site or building permit at the address on the permit application.

11 (g) — In the event a building permit expires prior to completion of the work on and  
12 commencement of occupancy of a housing project so that it will be necessary to obtain a new permit to  
13 carry out any development, the obligation to comply with this Program shall be cancelled, and any in-  
14 lieu fee previously paid to the Treasurer shall be refunded. If and when the sponsor applies for a new  
15 permit, the procedures set forth in this Ordinance regarding construction of housing or payment of the  
16 in-lieu fee shall be followed.

17 (h) — In the event that a development project for which an in-lieu fee imposed under this  
18 Section has been fully paid is demolished or converted to a use or uses not subject to this ordinance  
19 prior to the expiration of its estimated useful life, the City shall refund to the sponsor a portion of the  
20 amount of an in-lieu fee paid. The portion of the fee refunded shall be determined on a pro rata basis  
21 according to the ratio of the remaining useful life of the project at the time of demolition or conversion  
22 in relation to its total useful life. For purposes of this Ordinance, the useful life of a development  
23 project shall be 50 years.

24 SEC. 415.8 ~~315.7~~. DURATION AND MONITORING OF AFFORDABILITY.  
25

1 (a) All units constructed pursuant to Sections ~~415.5~~ ~~315.4~~ and ~~415.6~~ ~~315.5~~ must be  
2 owner-occupied in the case of ownership units or occupied by qualified households in the  
3 case of rental units, and shall not remain vacant for a period exceeding 60 days without the  
4 written consent of MOH ~~the Mayor's Office of Housing~~. All units constructed pursuant to  
5 Sections ~~415.5~~ ~~315.4~~ and ~~415.6~~ ~~315.5~~ must remain affordable to qualifying households for the  
6 life of the project. The income levels specified in the Notice of Special Restrictions and/or  
7 Conditions of Approval for the project shall be the required income percentages for the life of  
8 the project.

9 (b) The ~~Planning~~ Commission or the ~~Planning~~ Department shall require all housing  
10 projects subject to Section 415.1 et seq. ~~this ordinance~~ to record a Notice of Special Restrictions  
11 with the Recorder of the City and County of San Francisco. The Notice of Special Restrictions  
12 must incorporate the affordability restrictions. All projects described in Section ~~415.3~~  
13 ~~315.3(a)(1)~~ and ~~415.3~~ ~~315.3(a)(3)~~ must incorporate all of the requirements of this Section ~~415.7~~  
14 ~~315.7~~ into the Notice for Special Restrictions, including any provisions required to be in the  
15 Conditions of Approval for housing projects described in Section ~~415.3~~ ~~315.3(a)(2)~~. These  
16 Section ~~415.3~~ ~~315.3(a)(2)~~ projects which are housing projects which go through the conditional  
17 use or planned unit development process shall have Conditions of Approval. The Conditions  
18 of Approval shall specify that project applicants shall adhere to the marketing, monitoring, and  
19 enforcement procedures outlined in the Procedures Manual, as amended from time to time, in  
20 effect at the time of project approval. The ~~Planning~~ Commission shall file the Procedures  
21 Manual in the case file for each project requiring inclusionary housing pursuant to this  
22 Program. The Procedures Manual will be referenced in the Notice of Special Restrictions for  
23 each project.

24 (c) Any affordable rental units permitted by the ~~Planning~~ Commission to be  
25 converted to ownership units must satisfy the requirements of the Procedures Manual, as

1 amended from time to time, including that the units shall be sold at restricted sales prices to  
2 households meeting the income qualifications specified in the Notice of Special Restrictions or  
3 Conditions of Approval, with a right of first refusal for the occupant(s) of such units at the time  
4 of conversion. Upon conversion to ownership, the units are subject to the 50-year rolling  
5 resale restrictions, as described in Section 415.8(a) (~~315.7(a)~~).

6 (d) For ownership units, the Notice of Special Restrictions or Conditions of Approval  
7 will include provisions restricting resale prices and purchaser income levels according to the  
8 formula specified in the Procedures Manual, as amended from time to time. In the case that  
9 subordination of the Affordability Conditions contained in a recorded Notice of Special  
10 Restrictions may be necessary to ensure the Project Applicant's receipt of adequate  
11 construction and/or permanent financing for the project, or to enable first time home buyers to  
12 qualify for mortgages, the project applicant may follow the procedures for subordination of  
13 affordability restrictions as described in the principal project's Conditions of Approval and in  
14 the Procedures Manual. A release following foreclosure or other transfer in lieu of foreclosure  
15 may be authorized if required as a condition to financing pursuant to the procedures set forth  
16 in the Procedures Manual.

17 Purchasers of affordable units shall secure the obligations contained in the Notice of  
18 Special Restrictions or Conditions of Approval by executing and delivering to the City a  
19 promissory note secured by a deed of trust encumbering the applicable affordable unit as  
20 described in the Procedures Manual or by an alternative means if so provided for in the  
21 Procedures Manual, as amended from time to time.

22 SEC. ~~415.9~~ 415.8. ENFORCEMENT PROVISIONS AND MONITORING OF  
23 PROGRAM.

24 (a) A first construction document or first certificate of occupancy, whichever applies,  
25 shall not be issued by the Director of DBI ~~the Department of Building Inspection~~ to any unit in the

1 principal project until all of the affordable housing on-site or off-site housing development  
2 requirements of Sections 415.1 et seq. are satisfied. 315.4 or 315.5, if applicable, and Section 315.7  
3 are met. A first site permit for the principal project shall not be issued by the Director of the  
4 Department of Building Inspection until the requirements of Sections 315.4(e) and 315.6 regarding  
5 payment of the in-lieu fee, if applicable, have been met.

6 (b) If, after issuance of the first certificate of occupancy, the Planning Commission or  
7 Planning Department determines that a project sponsor applicant has failed to comply with any  
8 requirement in Sections 415.1 et seq. 315.4 or 315.5 and the recording of or any reporting  
9 requirements of Section 315.7 as detailed in the Procedures Manual, or has violated the  
10 Conditions of Approval or terms of the Notice of Special Restrictions, the Planning Commission,  
11 or Planning Department, or DBI may, until the violation is cured, (a) revoke the certificate of  
12 occupancy for the principal project or required affordable units, (b) impose a penalty on the  
13 project pursuant to Section 176(c) of this Code, and/or (c) the Zoning Administrator may  
14 enforce the provisions of Section 415.1 et seq. this Program through any means provided for in  
15 Section 176 of this Code.

16 (c) The Planning Commission or Planning Department shall notify MOH the Mayor's  
17 Office of Housing of any housing project subject to the requirements of Section 415.1 et seq. this  
18 Program, including the name of the project sponsor applicant and the number and location of  
19 the affordable units, within 30 days of the Planning Commission's or the Planning Department's  
20 approval of a building; or site permit for the project ; conditional use, planned unit development, or  
21 live/work permit application. MOH The Mayor's Office of Housing shall provide all project sponsors  
22 applicants with information concerning the City's first time home-buyer assistance programs  
23 and any other related programs MOH the Mayor's Office of Housing shall deem relevant to the  
24 Residential Inclusionary Affordable Housing this Program.



1 (d) The ~~Department Planning Commission~~ shall, as part of the annual Housing  
2 Inventory, report to the Board of Supervisors on the results of Section 415.1 et seq. ~~this Program~~  
3 including, but not limited to, a report on the following items:

4 (1) The number of, location of, and project applicant for housing projects which  
5 came before the ~~Planning~~ Commission for a conditional use or planned unit development  
6 permit, and the number of, location of, and project applicant for housing projects which were  
7 subject to the requirements of Section 415.1 et seq. ~~this Ordinance~~;

8 (2) The number of, location of, and project ~~sponsor applicant~~ for housing projects  
9 which applied for a waiver, adjustment, or reduction from the requirements of Section 415.1 et  
10 seq. ~~this Ordinance~~ pursuant to Section 406 of this Article 315.3(e), and the number of, location  
11 of, and project ~~sponsor applicant~~ for housing projects which were granted such a waiver,  
12 adjustment, or reduction and, if a reduction, to what percentage;

13 (3) The number of, location of, and project ~~sponsor applicant~~ for every housing  
14 project to which Section 415.1 et seq. ~~this Ordinance~~ applied and the number of market rate units  
15 and the number of affordable on- and off-site units provided, including the location of all of the  
16 affordable units; and

17 (e) A study is authorized to be undertaken under the direction of MOH ~~the Mayor's~~  
18 Office of Housing approximately every five years to update the requirements of Section 415.1 et  
19 seq. ~~this legislation~~. MOH The Mayor's Office of Housing shall make recommendations to the  
20 Board of Supervisors and the ~~Planning~~ Commission regarding any legislative changes. MOH  
21 the Mayor's Office of Housing shall specifically evaluate the different inclusionary housing  
22 requirements for developments of over 120 feet approximately five years from the enactment  
23 of the requirement or as deemed appropriate by MOH ~~the Mayor's Office of Housing~~. MOH shall  
24 coordinate this report with the five-year evaluation by the Director of Planning required by Section 410  
25 of this Article.

1 (f) ~~MOH The Mayor's Office of Housing~~ shall evaluate its monitoring system for  
2 affordable units created under this Section and shall compare its system with that of the San  
3 Francisco Redevelopment Agency with the goal of establishing, to the extent feasible, a single  
4 monitoring system for all inclusionary affordable housing units located in the City and County  
5 of San Francisco. Within 6 months of the effective date of Section 415.1 et seq. this Ordinance,  
6 MOH shall make any changes to its monitoring system necessary to bring its monitoring  
7 system into conformity with the system of the Redevelopment Agency, or, if necessary, MOH  
8 shall make recommendations to the Board of Supervisors to amend Section 415.1 et seq. this  
9 Ordinance in order to implement improvements to the monitoring system. If it is necessary to  
10 amend the Procedures Manual to change its monitoring system to comply with this Section,  
11 MOH may make any changes necessary to the Procedures Manual to comply with this  
12 Section 415.9(f) 315.8(e). For purposes of this Section 415.9(f) 315.8(e) only and on a one-time  
13 basis, MOH may amend the Procedures Manual without obtaining approval from the ~~Planning~~  
14 Commission. If MOH determines that some or all of the aspects of its system are more  
15 effective than the Redevelopment Agency's system, it shall inform the Board of Supervisors  
16 and recommend that the Board urge the Redevelopment Agency to conform its procedures to  
17 the City's.

18 (g) Annual Monitoring:

19 (1) ~~MOH The Mayor's Office of Housing~~ shall monitor and require occupancy  
20 certification for affordable ownership and rental units on an annual basis, as outlined in the  
21 Procedures Manual.

22 (2) ~~MOH The Mayor's Office of Housing~~ may require the owner of an affordable rental  
23 unit, the owner's designated representative, or the tenant in an affordable unit to verify the  
24 income levels of the tenant on an annual basis, as outlined in the Procedures Manual.

1            SEC. 416 (formerly Section 315.4(a)(1)(i)). MARKET AND OCTAVIA AREA PLAN

2            AFFORDABLE HOUSING FEE. (i) ~~Market and Octavia Area Plan~~: Sections 416.1 through 416.5,  
3            hereafter referred to as Section 416.1 et seq., set forth the requirements and procedures for the Market  
4            and Octavia Area Plan Affordable Housing Fee. The effective date of these requirements shall be either  
5            May 30, 2008, which is the date that the requirements originally became effective, or the date a  
6            subsequent modification, if any, became effective.

7            SEC. 416.1. FINDINGS. The Board of Supervisors hereby finds that:

8            A.        ~~The~~ additional affordable housing requirements of this Section are supported by  
9            the Nexus Study performed by Keyser Marston and Associates referenced in Section  
10           415.1(11) 315.2(12) and found in Board File No. 081152. The Board of Supervisors has  
11           reviewed the study and staff analysis and report of the study and, on that basis, finds that the  
12           study supports the current inclusionary housing requirements combined with the additional  
13           affordable housing fee. Specifically, the Board finds that the study: (1) identifies the purpose of  
14           the additional fee to mitigate impacts on the demand for affordable housing in the City; (2)  
15           identifies the use to which the additional fee is to be put as being to increase the City's  
16           affordable housing supply; and (3) establishes a reasonable relationship between the use of  
17           the additional fee for affordable housing and the need for affordable housing and the  
18           construction of new market rate housing. Moreover, the Board finds that the current  
19           inclusionary requirements combined with the additional fee are less than the cost of mitigation  
20           and do not include the costs of remedying any existing deficiencies. The Board also finds that  
21           the study establishes that the current inclusionary requirements and additional fee do not  
22           duplicate other City requirements or fees.

23           B.        Furthermore, the Board finds that generally an account has been established,  
24           funds appropriated, and a construction schedule adopted for affordable housing projects  
25           funded through the Inclusionary Housing program. ~~and~~ The additional fee or ~~that~~ the in-lieu

1 fees and the additional fee will reimburse the City for expenditures on affordable housing that  
2 have already been made.

3 C. ~~Furthermore, the Board finds that a~~ A major Market and Octavia Area Plan  
4 objective is to direct new market rate housing development to the area. That new market rate  
5 development will greatly outnumber both the number of units and potential new sites within  
6 the plan area for permanently affordable housing opportunities. The City and County of San  
7 Francisco has adopted a policy in its General Plan to meet the affordable housing needs of its  
8 general population and to require new housing development to produce sufficient affordable  
9 housing opportunities for all income groups, both of which will not be met by the projected  
10 housing development in the plan area. In addition, the "Draft Residential Nexus Analysis City  
11 and County of San Francisco" of December 2006 indicates that market rate housing itself  
12 generates additional lower income affordable housing needs for the workforce needed to  
13 serve the residents of the new market rate housing proposed for the plan area. In order to  
14 meet the demand created for affordable housing by the specific policies of the Plan and to be  
15 consistent with the policy of the City and County of San Francisco it is found that an additional  
16 affordable housing fee need be included on all market rate housing development in the Plan  
17 Area with priority for its use being given to the Plan area.

18 SEC. 416.2. DEFINITIONS. ~~See Section 401 of this Article. The definitions in Section 326.2~~  
19 ~~and 318.2 shall apply.~~

20 SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING REQUIREMENT. The  
21 requirements of Sections 415.1 ~~315~~ through 415.9 ~~315.9~~ shall apply in the Market and Octavia  
22 Plan Area in addition ~~subject~~ to the following: ~~An~~ additional affordable housing requirement  
23 ~~shall apply in the Market and Octavia Plan Area as follows:~~

24 (a) Fee Amount of fee: All development projects that have not received Planning  
25 Department or Commission approval as of the effective date of May 30, 2008 ~~this legislation~~

1 and that are subject to the Residential Inclusionary Affordable Housing Program shall pay an  
2 additional affordable housing fee per square foot of Residential Space Subject to the  
3 Community Improvements Impact Fee as follows; \$8.00 in the Van Ness Market Special Use  
4 District; \$4.00 in the NCT District; and \$0.00 in the RTO District.

5 (b) Other Fee Provisions. This additional affordable housing fee shall be subject to the  
6 inflation adjustment provisions of Section 409 and the waiver and reduction provisions of Section  
7 421.4. This additional affordable housing fee may not be met through the in-kind provision of  
8 community improvements or Community Facilities (Mello Roos) financing options of Sections 426.3(e)  
9 and (f).

10 (c) Exemption for Affordable Housing. A project applicant shall not pay a supplemental  
11 affordable housing fee for any square foot of space designated as a below market rate unit  
12 under Section 415.1 et seq. ~~this inclusionary affordable housing program~~ , ~~the Citywide Inclusionary~~  
13 Affordable Housing Program, or any other residential unit that is designated as an affordable  
14 housing unit under a Federal, State, or local restriction in a manner that maintains affordability  
15 for a term no less than 50 years.

16 (d) Timing of payment. ~~The Market and Octavia Plan Area Affordable Housing fFee~~  
17 shall be paid before the City issues a first construction document, with an option for the project  
18 sponsor to defer payment to prior to issuance of the first certificate of occupancy ~~for the project upon~~  
19 agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San Francisco  
20 Building Code.

21 SEC. 416.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENT.

22 (a) Determination of Requirements. The Department shall determine the applicability of  
23 Section 416.1 et seq. to any development project requiring a building or site permit and, if Section  
24 416.1 et seq. is applicable, shall impose any such requirements as a condition of approval for issuance

1 of the building or site permit. The project sponsor shall supply any information necessary to assist the  
2 Department in this determination.

3 (b) Department Notice to Development Fee Collection Unit of Fee Requirements. After the  
4 Department has made its final determination regarding the application of the affordable housing  
5 requirements to a development project pursuant to Section 416.1 et seq., it shall immediately notify the  
6 Development Fee Collection Unit at DBI of the applicable affordable housing fee amount in addition to  
7 the other information required by Section 402(b) of this Article.

8 (c) Process for Revisions of Determination of Requirements. In the event that the  
9 Department or the Commission takes action affecting any development project subject to Section 416.1  
10 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of  
11 Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article  
12 shall be followed.

13 SEC. 416.5. USE OF FUNDS. Use of Fee: The additional affordable housing requirement  
14 specified in this Section for the Market and Octavia Plan Area shall be paid into the Citywide  
15 Affordable Housing Fund, but the funds shall be separately accounted for. MOH shall expend  
16 the funds according to the following priorities: First, to increase the supply of housing  
17 affordable to qualifying households in the Market and Octavia Plan Area; second, to increase  
18 the supply of housing affordable to qualifying households within 1 mile of the boundaries of  
19 the Plan Area; third, to increase the supply of housing affordable to qualifying households in  
20 the City and County of San Francisco. The funds may also be used for monitoring and  
21 administrative expenses subject to the process described in Section ~~415.7(c)~~ ~~315.6(e)~~.

22 ~~Other fee provisions: This additional affordable housing fee shall be subject to the following~~  
23 ~~provisions of Sections 326 et seq.: the inflation adjustment provisions of Section 326.3(d); the waiver~~  
24 ~~and reduction provisions of Section 326.3(h); the lien proceedings in Section 326.4; and the refund~~  
25 ~~provisions of Section 326.5. This additional affordable housing fee may not be met through the in-kind~~

1 *provision of community improvements or Community Facilities (Mello-Roos) financing options of*  
2 *Sections 326.3(e) and (f).*

3 SEC. 417 (formerly Section 315.4(a)(1)(ii)). EASTERN NEIGHBORHOODS AREA PLAN  
4 ALTERNATE AFFORDABLE HOUSING IN-LIEU FEE. Sections 417.1 through 417.5, hereafter  
5 referred to as Section 417.1 et seq., set forth the requirements and procedures for the Eastern  
6 Neighborhoods Area Plan Alternate Affordable Housing In-Lieu Fee. The effective date of these  
7 requirements shall be either May 30, 2008, which is the date that the requirements originally became  
8 effective, or the date a subsequent modification, if any, became effective. (ii) Eastern Neighborhoods  
9 Project Area: The requirements of Sections 315 through 315.9 and 319 shall apply in the Eastern  
10 Neighborhoods Plan Area subject to the following and subject to any stated exceptions elsewhere in  
11 this Code, including the specific provisions in Section 319:

12 SEC. 417.1. FINDINGS. The Board of Supervisors hereby finds that:

13 A. ~~The~~ fee provisions of this Section are equivalent to or less than the fees for  
14 developments of over 20 units previously adopted by the Board in Ordinance No. 051685 and  
15 060529 and are also supported by the Nexus Study performed by Keyser Marston and  
16 Associates referenced in Section 415.1(11) ~~315.2(12)~~ and found in Board File No. 081152. The  
17 Board of Supervisors has reviewed the study and staff analysis prepared by the MOH Mayor's  
18 Office of Housing dated July 24, 2008 in Board File No. 081152 and, on that basis, finds that  
19 the study supports the current proposed changes to the inclusionary housing requirements for  
20 projects of 20 units or less in the Eastern Neighborhood Area Plan. Specifically, the Board  
21 finds that the study and staff memo: (1) identifies the purpose of the additional fee to mitigate  
22 impacts on the demand for affordable housing in the City; (2) identifies the use to which the  
23 additional fee is to be put as being to increase the City's affordable housing supply; and (3)  
24 establishes a reasonable relationship between the use of the additional fee for affordable  
25 housing and the need for affordable housing and the construction of new market rate housing.

1 Moreover, the Board finds that the new inclusionary requirements are less than the cost of  
2 mitigation and do not include the costs of remedying any existing deficiencies. The Board also  
3 finds that the study establishes that the inclusionary requirements do not duplicate other City  
4 requirements or fees.

5 B. Furthermore, the Board finds that generally an account has been established,  
6 funds appropriated, and a construction schedule adopted for affordable housing projects  
7 funded through the Inclusionary Housing program and the in lieu fees will reimburse the City  
8 for expenditures on affordable housing that have already been made.

9 C. ~~Furthermore, I~~The Board finds that small scale development faces a number of  
10 challenges in the current development climate, including limited access to credit and often, a  
11 higher land cost per unit for the small sites on which they develop. Because of these and  
12 other variations from larger-scale development, they operate under a somewhat unique  
13 development model which cannot be fully encapsulated within the constraints of the Eastern  
14 Neighborhoods Financial Analysis, prepared to assess the financial feasibility of increasing  
15 housing requirements and impact fees in the Plan Areas. To address these challenges, the  
16 Board finds that a number of slight modifications to the affordable housing requirements of the  
17 Eastern Neighborhoods, to apply to small projects (defined as 20 units or fewer, or less than  
18 25,000 gross square feet) are appropriate.

19 SEC. 417.2. DEFINITIONS. See Section 401 of this Article.

20 "Gross square footage" shall have the meaning set forth in Section 102.9.

21 ~~"Development Application" shall have the meaning set forth in Section 175.6.~~

22 "Eastern Neighborhood Controls" shall have the meaning set forth in Section 175.6.

23 Application.

24 SEC. 417.3. APPLICATION OF AFFORDABLE HOUSING REQUIREMENT.

25 (a) Application. The alternate affordable housing in-lieu fee described in this Section



1            ~~The option described in this subsection (ii)~~ shall only apply ~~be provided~~ to development  
2 projects that are subject to the Eastern Neighborhood Controls ~~as defined in Section 175.6 (e),~~  
3 ~~and~~ consist of 20 units or less or less than 25,000 gross square feet, and are subject to the  
4 requirements of Sections 415 through 415.9 and 419, and any stated exceptions elsewhere in this Code,  
5 including the specific provisions in Section 419.

6            (b)     Amount of Fee. ~~All Any sponsor of a development~~ projects subject to this  
7 ~~sub~~Section may choose to pay ~~a square foot~~ an alternate in-lieu fee equal to \$40.00 per gross  
8 square foot of net new residential development instead of the standard in-lieu fee requirements set  
9 forth provided for in Section ~~415.7~~ 315.6 as follows. ~~If this option is selected, the project applicant~~  
10 ~~shall pay \$40.00 per gross square foot of net new residential development.~~

11            (c)     Calculation of Gross Square Feet of Residential Area. The calculation of gross  
12 square feet shall not include nonresidential uses, including any retail, commercial, or PDR  
13 uses, and all other space used only for storage and services necessary to the operation or  
14 maintenance of the building itself.

15            (d)     Timing of Payment. The Eastern Neighborhoods Alternate Affordable Housing Fee  
16 ~~project applicant~~ shall be paid to the Development Fee Collection Unit at DBI prior to issuance of the  
17 first construction document, with an option for the project sponsor to defer payment to prior to  
18 issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge that would be  
19 deposited into the Citywide Affordable Housing Fund in accordance with Section 107A.13.3 of the San  
20 Francisco Building Code. pay the fee prior to issuance by DBI of the first site or building permit for the  
21 project. At the project applicant's option, it may choose to pay only 50% of the fee prior to issuance by  
22 DBI of the first site or building permit and, prior to issuance of the first site or building permit, the City  
23 shall impose a lien on the property for the remaining 50% of the fee through the procedures set forth in  
24 Section 315.6(f) except that no interest will accrue for the first twelve months from the issuance of the  
25 first construction document or site or building permit for the project. ~~The project applicant shall pay~~

1 ~~the remaining 50% of the fee prior to issuance by DBI of a first certificate of occupancy. When 100% of~~  
2 ~~the fee is paid, including interest if applicable, the City shall remove the lien.~~

3 SEC. 417.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENT.

4 (a) Determination of Requirements. The Department shall determine the applicability of  
5 Section 417.1 et seq. to any development project requiring a building or site permit and, if Section  
6 417.1 et seq. is applicable, shall impose any such requirements as a condition of approval for issuance  
7 of the building or site permit. The project sponsor shall supply any information necessary to assist the  
8 Department in this determination.

9 (b) Department Notice to Development Fee Collection Unit of Fee Requirements. After the  
10 Department has made its final determination regarding the application of the affordable housing  
11 requirements to a development project pursuant to Section 417.1 et seq., it shall immediately notify the  
12 Development Fee Collection Unit at DBI of the applicable affordable housing fee amount in addition to  
13 the other information required by Section 402(b) of this Article.

14 (c) Process for Revisions of Determination of Requirements. In the event that the  
15 Department or the Commission takes action affecting any development project subject to Section 417.1  
16 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of  
17 Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) shall be  
18 followed.

19 SEC. 417.5. USE OF FUNDS. Use of Fee. The Eastern Neighborhoods Area Plan Alternate  
20 In-Lieu fFee shall be paid into the Citywide Affordable Housing Fund, but the funds shall be  
21 separately accounted for. MOH shall expend the funds according to the following priorities:  
22 First, to increase the supply of housing affordable to qualifying households in the Eastern  
23 Neighborhoods Project Areas; second, to increase the supply of housing affordable to  
24 qualifying households within 1 mile of the boundaries of the Eastern Neighborhoods Project  
25 Areas; third, to increase the supply of housing affordable to qualifying households in the City

1 and County of San Francisco. The funds may also be used for monitoring and administrative  
2 expenses subject to the process described in Section 415.6(c) ~~315.6(e)~~.

3 ~~SEC. 315.9. PARTIAL INVALIDITY AND SEVERABILITY.~~

4 ~~If any provision of this Ordinance or its application to any housing project or to any~~  
5 ~~geographical area of the City, is held invalid, the remainder of this Ordinance, or the application of~~  
6 ~~such provision to other housing projects or to any other geographical areas of the City, shall not be~~  
7 ~~affected thereby.~~

8 SEC. 418 (formerly Section 318). RINCON HILL COMMUNITY IMPROVEMENTS FUND  
9 AND SOMA COMMUNITY STABILIZATION FUND IN DTR DISTRICTS.

10 Sections 418.2 through 418.7 ~~318.1–318.9~~, hereafter referred to as Section 418.1 et seq., set  
11 forth the requirements and procedures for the ~~Downtown Residential~~ Rincon Hill Community  
12 Improvements Fund and the SOMA Community Stabilization Fund. The effective date of these  
13 requirements is either August 19, 2005, which is the date that the requirements originally became  
14 effective, or the date a subsequent modification, if any, became effective.

15 SEC. 418.1 ~~318.1~~. FINDINGS.

16 A. The population of California has grown by more than 11 percent since 1990 and  
17 is expected to continue increasing. The San Francisco Bay Area is growing at a rate similar to  
18 the rest of the State. New residential construction in San Francisco is necessary to  
19 accommodate the additional population. At the same time, new residential construction should  
20 not diminish the City's open space or increase dependence on the private automobile for  
21 commuting.

22 San Francisco already is experiencing a severe shortage of housing available to  
23 people at all income levels, resulting in a sharp increase in home prices. The Association of  
24 Bay Area Governments' Regional Housing Needs Determination (RHND) forecasts that  
25

1 20,372 new residential units need to be built in San Francisco by 2006, and at least 5,639 of  
2 these units should be available to moderate income households.

3 The City should encourage new housing production in a manner that enhances existing  
4 neighborhoods and creates new residential and mixed-use neighborhoods. One solution to  
5 the housing crisis is to encourage the construction of higher density housing in areas of the  
6 City best able to accommodate such housing because of easy access to public transit and the  
7 availability of larger development sites.

8 Many elements constrain housing production in the City, making it a challenge to build  
9 housing that is affordable to those at moderate income levels. San Francisco is largely built  
10 out, and its geographical location at the northern end of a peninsula inherently prevents  
11 substantial new development. There is no available adjacent land to be annexed, as the cities  
12 located on San Francisco's southern border are also dense urban areas. Thus, new  
13 construction of housing is limited to areas of the City not previously designated as residential  
14 areas, infill sites, or areas with increased density. New market-rate housing absorbs a  
15 significant amount of the remaining supply of land and other resources available for  
16 development and thus limits the supply of affordable housing.

17 Emerging downtown residential areas of the City contain many older commercial,  
18 institutional and industrial uses. Due to the underutilization of land in these areas and their  
19 proximity to downtown employment and City and regional transport, they present an  
20 opportunity to build a quantity of new housing at increased densities within easy walking  
21 distance of the downtown and City and regional transit centers in a way that can contribute to  
22 a vibrant downtown community over the next several years. The Planning Department is  
23 currently rezoning these areas to a "Downtown Residential" (DTR) zoning that will enable  
24 significant new high-density residential development. These areas are lacking, however, in  
25 even basic infrastructure and amenities necessary to serve a residential population, and the

1 need for these improvements will increase as the downtown's residential population,  
2 especially families and children, grow with the transformation of these areas into dense  
3 mixed-use residential districts. While the open space requirements imposed on individual  
4 developments address minimum needs for private open space and access to light and air,  
5 such open space cannot provide the same social and recreational opportunities as safe and  
6 attractive public sidewalks, parks and other community services, nor does it contribute to the  
7 overall transformation of the district into a safe and attractive residential area.

8 In order to enable the City and County of San Francisco to create a coherent,  
9 attractive, and safe residential neighborhood in these emerging downtown residential areas,  
10 and to increase property values and investment in the district, it is necessary to upgrade  
11 existing streets and streetscaping, and to acquire and develop neighborhood parks, recreation  
12 facilities and other community services to serve the new residential population. To fund such  
13 community infrastructure and amenities, new residential development in the district shall be  
14 assessed development impact fees proportionate to the increased demand for such  
15 infrastructure and amenities created by the new housing. The City will use the proceeds of the  
16 fee to build new infrastructure and enhance existing infrastructure in the district or within 250  
17 feet of the district that provides direct benefits to the new housing. The net increase in  
18 individual property values in these areas due to the enhanced neighborhood amenities  
19 financed with the proceeds of the fee are expected to exceed the payments of fees by the  
20 sponsors of residential development. A Community Improvements Impact Fee shall be  
21 established for DTR districts as set forth herein.

22 B. To respond to this identified need for housing, Rincon Hill and other downtown  
23 neighborhoods are proposed to be rezoned as part of comprehensive neighborhood plans to  
24 encourage high-density residential uses. These areas are currently occupied primarily by  
25 older commercial and industrial uses with minimal public infrastructure and amenities to

1 support a significant residential population. In addition, very few residents currently reside in  
2 these areas. New residential development in these areas will impact the local infrastructure  
3 and generate a substantial need for community improvements as the district's population  
4 grows as a result of new residential development. Substantial new investments in community  
5 infrastructure, including parks, pedestrian and streetscape improvements, and other  
6 community facilities are necessary to mitigate the impacts of new development in these  
7 districts.

8 The amendments to the General Plan, Planning Code and Zoning Map that correspond  
9 to Section 418.1 et seq. ~~this Ordinance~~ will permit an extraordinary amount of new residential  
10 development. More than 2,220 new units representing approximately 5,100 new residents  
11 would be anticipated in the neighborhood, and along with other approved projects, will result  
12 in a 400% increase in the area's residential population. This new development will have an  
13 extraordinary impact on the district's dated infrastructure. As described more fully in the  
14 Rincon Hill Plan Final Environmental Impact Report, San Francisco Planning Department,  
15 Case No. 2000.1081E, 2005 on file with the Clerk of the Board in File No. 050865, new  
16 development will also generate substantial new traffic in the area, which will impact the area.  
17 The Rincon Hill Plan proposes to mitigate these impacts by providing extensive pedestrian,  
18 traffic-calming and other streetscape improvements that will make it attractive to residents to  
19 make as many daily trips as possible on foot, by bicycle or on transit. A comprehensive  
20 program of new public infrastructure is necessary to mitigate the impacts of the proposed new  
21 development and to provide these basic community improvements to the area's growing  
22 residential population.

23 As a result of this new development, property tax revenue is expected to increase by  
24 as much as \$29 million annually in Rincon Hill. These revenues will fund improvements and  
25 expansions to general City services, including Police, Fire, Emergency, and other services

1 needed to partially meet increased demand associated with new development. Local impacts  
2 on the need for community infrastructure will be extraordinary in Rincon Hill, compared to  
3 those typically funded by city government through property tax revenues. The relative cost of  
4 capital improvements, along with the reduced role of State and federal funding sources,  
5 increases the necessity for development impact fees to cover these costs. General property  
6 tax revenues will not be adequate to fully fund the costs of the community infrastructure  
7 necessary to mitigate the impacts of new development in the Rincon Hill area.

8 Development impact fees are a more cost-effective, realistic way to implement  
9 mitigations to a local area associated with a particular development proposal's impact. As  
10 important, the proposed Rincon Hill Community Infrastructure Impact Fee would be dedicated  
11 to the Rincon Hill area, directing benefits of the fund directly to those who pay into the fund.

12 While this fee will increase the overall burden on new development in the area, the  
13 burden is typically reflected in a reduced sale price for developable land, or passed on to the  
14 buyers/renters of housing in the area and thus is born primarily by those who have caused the  
15 impact and who will ultimately enjoy the benefits of the community improvements it pays for.

16 C. The purpose of the proposed Rincon Hill Community Infrastructure Impact Fee  
17 is to provide specific improvements, including community open spaces, pedestrian and  
18 streetscape improvements and other facilities and services. These improvements are  
19 described in detail in the Rincon Hill Plan and Section 418.1 et seq. ~~the proposed ordinance~~, and  
20 are necessary to meet established City standards for the provision of such facilities. The  
21 Rincon Hill Community Improvements Fund and Community Infrastructure Impact Fee will  
22 create the necessary financial mechanism to fund these improvements in proportion to the  
23 need generated by new development.

24 The capital improvements, which the fee would fund, are clearly described in Section  
25 418.1 et seq. ~~the Ordinance~~, and in Table 1 below. The fee would be used solely to fund the

1 acquisition, design, construction, and maintenance of public facilities in DTR Districts, and  
2 specifically in the Rincon Hill area. The proposed fees only cover impacts caused by new  
3 development and are not intended to remedy already existing deficiencies; those costs will be  
4 paid for by other sources.

5 The proposed improvements described in Table 1 are necessary to serve the new  
6 population at the anticipated densities and meet established standards for local access to  
7 parks and community facilities described in the General Plan.

8 The exact amount of the fee has been calculated by the *Planning* Department based on  
9 accepted professional methods for the calculation of such fees described in more detail in the  
10 *Planning Depart Department's* case report for *Section 418.1 et seq. this Ordinance*, on file with the  
11 Clerk of the Board in File No. 050865. Cost estimates are based on a detailed assessment of  
12 the potential cost to the city of providing the specific improvements described in the Rincon  
13 Hill Plan.

14 D. The proposed Rincon Hill Community Infrastructure Impact Fee would fund  
15 mitigations of the impacts of new development on:

- 16 • Open Space: Acquisition and development of neighborhood parks;
- 17 • Streets: Extensive streetscape improvements throughout the district, including  
18 sidewalk widenings on Spear, Main, Beale and Essex Streets that would result in useable  
19 neighborhood open space;
- 20 • Community Facilities: ADA, seismic and tenant improvements to the Sailor's Union of  
21 the Pacific building at 450 Harrison Street that would make the building available for public  
22 uses, including community arts, recreation and education facilities; and
- 23 • Library Services: Funding to provide library services to the area's new residential  
24 population to established City standards, whether provided in the area or in existing San  
25 Francisco Public Library facilities.



1 Specific capital improvements to mitigate the impact of new residential development in  
 2 Rincon Hill are proposed and detailed cost estimates have been developed. These are  
 3 described in Table 1.

4 Table 1  
 5 Cost Summary of the Proposed Rincon Hill  
 6 Community Infrastructure Improvements

8 Total Unit Potential Under the Proposed Rezoning	2,220
9	
10 Average Unit Size (net SF)	925
11	
12 Total Occupiable Residential SF (net SF)	2,053,500
13	

15 Mitigation	Cost
16 Living Street Open Space 17 Improvements	\$ 5,924,406
18 Pedestrian Safety and 19 Streetscape Improvements	3,883,953
20 Traffic Calming to 21 Residential Alleys	1,381,000
22 Rincon Hill Park	12,866,052
23 Essex Hillside Park	472,050
24 Sailor's Union of the Pacific Community Center	2,500,000
25	

1	Library Services	601,718
2	Gross Cost of Community	\$ 27,629,179
3	Facility Improvements	
4	Less Current Requirements for Street	
5	Improvements	(1,701,679)
6	Net Cost of Community	
7	Facility Improvements	\$25,927,499.81
8		
9	Average Cost per Occupiable Residential SF	\$ 12.63
10	SF Planning Department, April 2005	

11 The costs in Table I are realistic estimates made by the *Planning* Department of the  
12 actual costs for improvements related to mitigating the impacts of new development. Detailed  
13 cost estimates are on file at the *Planning* Department in Case File No. 2000.108 and on file  
14 with the Clerk of the Board in File No. 050865. The proposed fee would cover 85% of the  
15 estimated costs of the community improvements necessary to mitigate these impacts, as  
16 described in Table 2. By charging developers less than the maximum amount of the justified  
17 impact fee, the City avoids any need to refund money to developers if the fees collected  
18 exceed costs.

19 E. Section 418.1 et seq. The Ordinance imposes the following fee structure.

20 Table 2  
21 Proposed Rincon Hill Community  
22 Infrastructure Impact Fee, Rates  
23 and Projected Fee Revenues

24		All Projects
25		

1	No. of Units	2,220
2	Total Occ. Res. SF**	2,109,000
3	Fee Rate/Occ. Res. SF	\$ 11.00
4	Projected Fee Revenue	\$ 23,199,000
5	**Assumes an average of 925 net SF per unit	
6	SF Planning Department, April 2005	
7		

8 F. The proposed Rincon Hill Community Infrastructure Impact Fee is necessary to  
9 meet relevant State and national service standards, as well as local standards in the Goals  
10 and Objectives of the General Plan as described below:

11 Open Space: The San Francisco General Plan contains the following objectives and  
12 policies that call for the provision of streetscape parks and community facilities improvements  
13 to serve San Francisco's residential population: Recreation and Open Space Element  
14 Objective 2 (Develop and maintain a diversified and balanced citywide system of high quality  
15 public open space); Policy 2.1 (Provide an adequate total quantity and equitable distribution of  
16 public open spaces throughout the City); Policy 2.7 (Acquire additional open space for public  
17 use), Objective 4 (Provide opportunities for recreation and the enjoyment of open space in  
18 every San Francisco neighborhood), Policy 4.4 (Acquire and develop new public open space  
19 in existing residential neighborhoods, giving priority to areas which are most deficient in open  
20 space), Policy 4.6 (Assure the provision of adequate public open space to serve new  
21 residential development), and Urban Design Element Policy 4.8 (Provide convenient access  
22 to a variety of recreation opportunities).

23 The Recreation and Open Space Element of the General Plan cites the National Park  
24 and Recreation Association open space standard of 10 acres per 1,000 residents. Although it  
25 acknowledges that this standard is unachievable in a built-out city with limited open space

1 opportunities such as San Francisco, it notes that San Francisco does have an average of  
2 approximately 5.5 open space acres per resident, and states, "to the extent it reasonably can,  
3 the City should increase the per capita supply of public open space within the City." This  
4 standard is consistent with the national standards for the provision of open space to serve  
5 residential uses.

6 Additionally, the General Plan contains standards for the distribution of public open  
7 space. Areas within acceptable walking distance of open space include areas within 1/2 mile  
8 of a "Citywide" open space (1--1,000 acres), 3/8 mile of a "District" open space (> 10 acres),  
9 1/4 mile of a "Neighborhood" open space (1--10 acres), and 1/8 mile of a "Subneighborhood"  
10 open space (< 1 acre).

11 Map 2 of the Recreation and Open Space Element shows that the entirety of Rincon  
12 Hill is not served by open space, and Figure 3 identifies the Rincon Hill area as an "Area Not  
13 Served by Public Open Space." Map 4 identifies the Rincon Hill area as an area in which to  
14 "Provide New Open Space in the General Vicinity."

15 As a primarily industrial and commercial area, Rincon Hill has historically not had a  
16 great need for open space. However, as this area transitions to residential use, new  
17 development will create a need for open space to serve the new residential population,  
18 pursuant to Recreation and Open Space Element Policy 4.6, which states, "Assure the  
19 provision of adequate public open space to serve new residential development."

20 The neighborhood open spaces which would be funded through the Rincon Hill  
21 Community Infrastructure Impact Fee would alleviate a portion of the impacts associated with  
22 new development and meet the needs of the new population by raising the per capita amount  
23 of open space in the district, and by bringing parts of the district within 1/4 mile of an open  
24 space, the General Plan standard for "Neighborhood" open spaces (1--10 acres). Together  
25 with existing and other proposed parks, approximately 8.5 acres of open space would be

1 available to serve the Rincon Hill area's projected population of 16,400 residents, or 0.52  
2 acres of open space per 1000 residents.

3 Streetscape Improvements: The proposed pedestrian and streetscape improvements  
4 would increase the amount of useable open space in Rincon Hill, improve pedestrian safety,  
5 reduce automobile trips and therefore mitigate traffic impacts expected in the district. Policy  
6 4.11 of the Urban Design Element states, "Make use of street space and other unused public  
7 areas for recreation," and continues: "Walking along neighborhood streets is the common  
8 form of recreation. The usefulness of streets for this purpose can in many cases be improved  
9 by widening of sidewalks and installation of simple improvements such as benches and  
10 landscaping. Such improvements can often be put in place without narrowing of traffic lanes  
11 by use of parking bays with widening of sidewalks at the intersections and at other points  
12 unsuitable for parking. Streets that have roadways wider than necessary, and streets that are  
13 not developed for traffic because of their steepness, provide exceptional opportunities for  
14 recreation. These areas can be developed with playgrounds, sitting areas, viewpoints and  
15 landscaping that make them neighborhood assets and increase the opportunities for  
16 recreation close to the residents' homes."

17 Map 9 of the Recreation and Open Space Element identifies Rincon Hill as one area to  
18 "Improve Street Space for Recreation and Landscaping where Possible."

19 In Rincon Hill, which will be deficient in open space when built out as a residential  
20 neighborhood, and where available land for new open space is scarce, excess street space  
21 that can be used for open space forms an important component of the open space system. A  
22 portion of the funds collected from the Rincon Hill Community Infrastructure Impact Fee would  
23 be used to widen sidewalks on streets with excess roadway width, and use this space for  
24 recreation and open space amenities, helping to alleviate the open space need brought about  
25 by new development.

1 National and international transportation studies (such as the Dutch Pedestrian Safety  
2 Research Review, T. Hummel, SWOV Institute for Road Safety Research (Holland), and  
3 University of North Carolina Highway Safety Research Center for the U.S. Dpt. of  
4 Transportation, 1999 on file with the Clerk of the Board in File No. 050865) have  
5 demonstrated that pedestrian, traffic-calming and streetscape improvements of the type  
6 proposed for Rincon Hill result in safer, more attractive pedestrian conditions. These types of  
7 improvements are essential to making pedestrian activity safe and attractive in the district,  
8 thereby helping to mitigate traffic impacts associated with excess automobile trips that could  
9 otherwise be generated by new development.

10 Community Facilities: The Community Facilities Element of the General Plan contains  
11 the following relevant provisions: Objective 3 (Assure that Neighborhood Residents Have  
12 Access to Needed Services and a Focus for Neighborhood Activities), Policy 3.1 (Provide  
13 neighborhood centers in areas lacking adequate community facilities, Policy 3.3 (Develop  
14 centers to serve an identifiable neighborhood), Policy 3.4 (Locate neighborhood centers so  
15 they are easily accessible and near the natural center of activity), and Policy 3.5 (Develop  
16 neighborhood centers that are multipurpose in character, attractive in design, secure and  
17 comfortable, and inherently flexible in meeting the current and changing needs of the  
18 neighborhood served.

19 Figure 2 of the Recreation and Open Space Element shows Rincon Hill as entirely  
20 outside of the service area for public gyms and recreation centers.

21 A portion of the funds from the Rincon Hill Community Infrastructure Impact Fee would  
22 pay for tenant improvements to the Sailor's Union of the Pacific Building at 450 Harrison  
23 Street, for spaces within the building that would be used for public community arts, education  
24 and recreation facilities. National and international best practices identify the need to provide  
25 community facilities to serve residential areas, especially in areas rezoned for high-density

1 housing without existing community infrastructure. Vancouver, B.C. has established service  
2 standards for the provision of community facilities in high-density residential areas. The  
3 *Planning* Department has determined that the community facilities proposed in Rincon Hill are  
4 consistent with these standards. Rincon Hill is currently deficient in community facilities; this  
5 condition will be exacerbated when the residential population of the area increases over time.  
6 Funds from the Community Infrastructure Impact Fee would be used to directly fund a new  
7 community center that would alleviate the deficiency brought about by the demand generated  
8 from new residents, by creating a public recreation, arts, and education facility accessible to  
9 all Rincon Hill residents.

10 Library Services: New residents in Rincon Hill will generate a substantial new need for  
11 library services. The San Francisco Public Library has indicated that it does not anticipate  
12 adequate demand for a branch library in Rincon Hill at this time. However, the increase in  
13 population in Rincon Hill will create additional demand at other libraries, primarily the Main  
14 Library and the new Mission Bay branch library. The Rincon Hill Community Infrastructure  
15 Impact Fee includes a funding for library services equal to \$69 per new resident, which is  
16 consistent with the service standards used by the San Francisco Public Library for allocating  
17 resources to neighborhood branch libraries.

18 F. The development of the Rincon Hill Area Plan will also have economic impacts  
19 on the immediately surrounding area of SOMA. Specifically, the development will have  
20 impacts on affordable housing, economic and community development, and community  
21 cohesion in SOMA.

22 G. Affordable Housing: The findings in *former* Planning Code Section 315.2 of the  
23 Inclusionary Affordable Housing Ordinance are hereby readopted and updated as follows:

24 1. Affordable housing is a paramount statewide concern. In 1980, the Legislature  
25 declared in Government Code Section 65580:

1 (a) The availability of housing is of vital statewide importance, and the early  
2 attainment of decent housing and a suitable living environment for every California family is a  
3 priority of the highest order.

4 (b) The early attainment of this goal requires the cooperative participation of  
5 government and the private sector in an effort to expand housing opportunities and  
6 accommodate the housing needs of Californians of all economic levels.

7 (c) The provision of housing affordable to low- and moderate-income households  
8 requires the cooperation of all levels of government.

9 (d) Local and state governments have a responsibility to use the powers vested in  
10 them to facilitate the improvement and development of housing to make adequate provision  
11 for the housing needs of all economic segments of the community.

12 The Legislature further stated in Government Code Section 65581 that: It is the intent  
13 of the Legislature in enacting this article:

14 (a) To assure that counties and cities recognize their responsibilities in contributing  
15 to the attainment of the state housing goal.

16 (b) To assure that counties and cities will prepare and implement housing elements  
17 which will move toward attainment of the state housing goal.

18 (c) To recognize that each locality is best capable of determining what efforts are  
19 required by it to contribute to the attainment of the state housing goal.

20 The California Legislature requires each local government agency to develop a  
21 comprehensive long-term general plan establishing policies for future development. As  
22 specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan must  
23 (1) "encourage the development of a variety of types of housing for all income levels,  
24 including multifamily rental housing"; (2) "[a]ssist in the development of adequate housing to  
25 meet the needs of low- and moderate-income households": and (3) "conserve and improve



1 the condition of the existing affordable housing stock. which may include addressing ways to  
2 mitigate the loss of dwelling units demolished by public or private action."

3         2. San Francisco faces a continuing shortage of affordable housing for very low  
4 and low-income residents. The San Francisco Planning Department reported that for the four  
5 year period between 2000 and 2004, 8,389 total new housing units were built in San  
6 Francisco. This number includes 1,933 units for low and very low-income households out of a  
7 total need of 3,930 low and very low-income housing units for the same period. According to  
8 the state Department of Housing and Community Development, there will be a regional need  
9 for 230,743 new housing units in the nine Bay Area counties from 1999-2006. Of that amount,  
10 at least 58 percent, or 133,164 units, are needed for moderate, low and very low-income  
11 households. The Association of Bay Area Governments (ABAG) is responsible for dividing the  
12 total regional need numbers among its member governments which includes both counties  
13 and cities. ABAG estimates that San Francisco's low and very low-income housing production  
14 need from 1999 through 2006 is 7,370 units out of a total new housing need of 20,372 units,  
15 or 36% of all units built. Within the past four years, only 23% of all housing built, or 49% of the  
16 previously projected housing need for low and very low-income housing for the same period,  
17 was produced in San Francisco. The production of moderate income rental units also fell short  
18 of the ABAG goal. Only 351 moderate income units were produced over the previous four  
19 years, or 4% of all units built, compared to ABAG's call for 28% of all units to be affordable to  
20 households of moderate income. Given the need for 3,007 moderate income units over the 4-  
21 year period, only 12% of the projected need for moderate income units was built.

22         3. In response to the above mandate from the California Legislature and the  
23 projections of housing needs for San Francisco, San Francisco has instituted several  
24 strategies for producing new affordable housing units. The 2004 Housing Element of the  
25 General Plan recognizes the need to support affordable housing production by increasing site

1 availability and capacity for permanently affordable housing through the inclusion of affordable  
2 units in larger market-rate housing projects. Further, the City, as established in the General  
3 Plan, seeks to encourage the distribution of affordable housing throughout all neighborhoods  
4 and, thereby, offer diverse housing choices and promote economic and social integration. The  
5 2004 Housing Element calls for an increase in the production of new affordable housing and  
6 for the development of mixed income housing to achieve social and cultural diversity. This  
7 legislation furthers the goals of the State Legislature and the General Plan.

8           4.       The 2005 Consolidated Plan for July 1, 2000-June 30, 2005, issued by the  
9 Mayor's Office of Community Development and the Mayor's Office of Housing establishes that  
10 extreme housing pressures face San Francisco, particularly in regard to low- and moderate-  
11 income residents. Many elements constrain housing production in the City. This is especially  
12 true of affordable housing. As discussed in the 2004 Housing Element published by the City  
13 Planning Department, San Francisco is largely built out, with very few large open tracts of  
14 land to develop. As noted in the 2000 Consolidated Plan, its geographical location at the  
15 northern end of a peninsula inherently prevents substantial new development. There is no  
16 available adjacent land to be annexed, as the cities located on San Francisco's southern  
17 border are also dense urban areas. Thus new construction of housing is limited to areas of the  
18 City not previously designated as residential areas, infill sites, or to areas with increased  
19 density. New market-rate housing absorbs a significant amount of the remaining supply of  
20 land and other resources available for development and thus limits the supply of affordable  
21 housing.

22           There is a great need for affordable rental and owner-occupied housing in the City.  
23 Housing cost burden is one of the major standards for determining whether a locality is  
24 experiencing inadequate housing conditions, defined as households that expend 30% or more  
25 of gross income for rent or 35% or more of household income for owner costs. The 2000

1 Census indicates that 64,400 renter households earning up to 80% of the area median  
2 income are cost burdened. Of these, about 25,000 households earn less than 50% AMI and  
3 pay more than 50% of their income to rent. According to more recent data from the American  
4 Housing Survey, 80,662 total renter households, or 41%, are cost burdened in 2003. A  
5 significant number of owners are also cost burdened. According to 2000 Census data, 18,237  
6 of owners are cost-burdened, or 23% of all owner households. The 2003 American Housing  
7 Survey indicates that this level has risen to 29%.

8 The San Francisco residential real estate market is one of the most expensive in the  
9 United States. In May 2005, the California Association of Realtors reported that the median  
10 priced home in San Francisco was \$755,000. This is 18% higher than the median priced  
11 home one year earlier, 44% higher than the State of California median, and 365% higher than  
12 the nation average. While the national home ownership rate is approximately 69%, only  
13 approximately 35% of San Franciscans own their own home. Clearly, the majority of market-  
14 rate homes for sale in San Francisco are priced out of the reach of low and moderate income  
15 households. In May 2005, the average rent for a 2-bedroom apartment was \$1821, which is  
16 affordable to households earning over \$74,000.

17 These factors contribute to a heavy demand for affordable housing in the City that the  
18 private market cannot meet. Each year the number of market rate units that are affordable to  
19 low income households is reduced by rising market rate rents and sales prices. The number  
20 of households benefiting from rental assistance programs is far below the need established by  
21 the 2000 Census. Because the shortage of affordable housing in the City can be expected to  
22 continue for many years, it is necessary to maintain the affordability of the housing units  
23 constructed by housing developers under this Program. The 2004 Housing Element of the  
24 General Plan recognizes this need. Objective 1 of the Housing Element is to provide new  
25 housing, especially permanently affordable housing, in appropriate locations which meets

1 identified housing needs and takes into account the demand for affordable housing created by  
2 employment demand. Objective 6 is to protect the affordability of existing housing, and to  
3 ensure that housing developed to be affordable be kept affordable for 50-75 year terms, or  
4 even longer if possible.

5 In 2004 the National Housing Conference issued a survey entitled "Inclusionary  
6 Zoning: The California Experience." The survey found that as of March 2003, there were 107  
7 cities and counties using inclusionary housing in California, one-fifth of all localities in the  
8 state. Overall, the inclusionary requirements were generating large numbers of affordable  
9 units. Only six percent of jurisdictions reported voluntary programs, and the voluntary nature  
10 appears to compromise the local ability to guarantee affordable housing production. While  
11 there was a wide range in the affordability percentage-requirements for inclusionary housing,  
12 the average requirement for affordability in rental developments is 13%. Approximately half of  
13 all jurisdictions require at least 15% to be affordable, and one-quarter require 20% or more to  
14 be affordable.

15 5. Development of new market-rate housing makes it possible for new residents to  
16 move to the City. These new residents place demands on services provided by both public  
17 and private sectors. Some of the public and private sector employees needed to meet the  
18 needs of the new residents earn incomes only adequate to pay for affordable housing.  
19 Because affordable housing is in short supply within the City, such employees may be forced  
20 to live in less than adequate housing within the City, pay a disproportionate share of their  
21 incomes to live in adequate housing within the City, or commute ever-increasing distances to  
22 their jobs from housing located outside the City. These circumstances harm the City's ability  
23 to attain goals articulated in the City's General Plan and place strains on the City's ability to  
24 accept and service new market-rate housing development.

25

1           6.       The development of affordable housing on the same site as market-rate housing  
2 increases social and economic integration vis-a-vis housing in the City and has corresponding  
3 social and economic benefits to the City. Inclusionary housing provides a healthy job and  
4 housing balance. Inclusionary housing provides more affordable housing close to employment  
5 centers which in turn may have a positive economic impact by reducing such costs as  
6 commuting and labor costs. However, there may also be trade-offs where constructing  
7 affordable units at a different site than the site of the principal principle project may produce a  
8 greater number of affordable units without additional costs to the project sponsor applicant. If a  
9 project sponsor applicant may produce a significantly greater number of affordable units off-site  
10 then it is in the best interest of the City to permit the development of affordable units at a  
11 different location than that of the principal principle project.

12           7.       Provided project sponsors applicants can take these requirements into  
13 consideration when negotiating to purchase land for a housing project, the requirements of  
14 this Section are generally financially feasible for project applicants to meet, particularly  
15 because of the benefits being conferred by the City to housing projects under Section 418.1 et  
16 seq. this ordinance. Section 418.1 et seq. This ordinance provides a means by which a project  
17 sponsor applicant may seek a reduction or waiver of the requirements of this mitigation fees if  
18 the project sponsor applicant can show that imposition of these requirements would create an  
19 unlawful financial burden.

20           8.       Conditional Use and Planned Unit Development Permits permit the development  
21 of certain uses not permitted as of right in specific districts or greater density of permitted  
22 residential uses. As the General Plan recognizes, through the conditional use and planned  
23 unit development process, applicants for housing projects generally receive material  
24 economic benefits. Such applicants are generally permitted to build in excess of the generally  
25 applicable black letter requirements of the Planning Code for housing projects resulting in

1 increased density, bulk, or lot coverage or a reduction in parking or other requirements or an  
2 approval of a more intensive use over that permitted without the conditional use permit or  
3 planned unit development permit. Through the conditional use and planned unit development  
4 process, building standards can be relaxed in order to promote lower cost home construction.  
5 An additional portion of San Francisco's affordable housing needs can be supplied (with no  
6 public subsidies or financing) by private sector housing developers developing inclusionary  
7 affordable units in their large market-rate projects in exchange for the density and other  
8 bonuses conferred by conditional use or planned unit development approvals, provided it is  
9 financially attractive for private sector housing developers to seek such conditional use and/or  
10 planned unit development approvals. In the Rincon Hill context, the City is conferring the  
11 traditional benefits of a conditional use permit through the provisions of the Rincon Hill Plan.  
12 Thus developers receive the benefits of a conditional use but their development is generally  
13 principally permitted.

14 9. The City wants to balance the burden on private property owners with the  
15 demonstrated need for affordable housing in the City. For the reasons stated above, the  
16 Board of Supervisors thus intends to apply an inclusionary housing requirement to all  
17 residential projects of 10 units or more and, due to the factors discussed above, the Board will  
18 apply the percentage assigned to conditional use and planned unit development permits to all  
19 development in the Rincon Hill Plan Area.

20 10. The Rincon Hill Plan enables new market rate development on major  
21 opportunity sites, which, in effect, reduces land available for affordable housing. Furthermore,  
22 new market rate development in Rincon Hill will be of greater density than allowed elsewhere  
23 in the South of Market, increasing land values. This increase in land values further reduces  
24 the feasibility for affordable housing in the Rincon Hill Plan area, and justifies imposition of a  
25

1 somewhat greater affordable housing requirement on housing projects in the Rincon Hill Plan  
2 area.

3 The proposed new development in the Rincon Hill area will also lead to increased  
4 home prices and increased rental rates in the immediate Rincon Hill area and the surrounding  
5 South of Market area. This new development and corresponding increase in prices in the  
6 Rincon Hill area will cause displacement of existing residents.

7 New development in the Rincon Hill area will be marketed to higher income groups  
8 than other new development in San Francisco. Higher income groups have a higher demand  
9 for services than other income groups, so a higher number of workers will need to be housed  
10 in the area. Workers in the service industry generally make less than median income. The  
11 development in Rincon Hill represents the development of a disproportionate share of the  
12 available land for remaining housing development in the City.

13 The new development creates the need for additional affordable housing in the South  
14 of Market neighborhood and the need to provide subsidies for existing residents so that they  
15 will not be displaced and can continue living in their current neighborhood. In order to avoid  
16 displacement from the new development, residents will also need financial support to avoid  
17 eviction.

18 In addition, through the amendments to the Rincon Hill Area Plan and related zoning  
19 maps, the overall development capacity of the Rincon Hill area will be increased by 1)  
20 increasing permitted height and bulk, 2) eliminating residential density limits by lot area, and  
21 3) establishing a minimum residential to commercial use ratio. Existing permitted heights  
22 range from 80 feet up to a maximum of 250 feet. The new Rincon Hill zoning would increase  
23 heights up to 400-550 feet in selected locations. The permitted bulk for residential towers will  
24 be increased from a maximum floor plate of 7,500 sf to a range from 7,500--10,000 sf. The  
25 area's existing RC-4 zoning has a maximum permitted residential density of 1 unit per 200 of

1 lot area; this limit will be eliminated and the height and bulk envelope will control the maximum  
2 development permitted. Thus project sponsors in the area are receiving a substantial increase  
3 in density over what is currently permitted.

4 H. Economic and community development: The new development in Rincon Hill will  
5 also change the economic landscape of the Rincon Hill area and the South of Market area.  
6 The new development in Rincon Hill will displace small businesses directly by focusing  
7 development in the neighborhood on residential development and indirectly due to higher  
8 rents and higher prices for real estate. Thus existing small businesses need financial  
9 assistance to avoid being displaced.

10 The new development in the Rincon Hill area will also affect the type of jobs available  
11 in the Rincon Hill and South of Market area. Current residents of SOMA are employed in the  
12 Rincon Hill and SOMA area. New development in the Rincon Hill area will concentrate on  
13 residential development, thus pushing out other uses including light industrial uses and small  
14 business. Local workers will need to be retrained to avoid job displacement from the  
15 development in the Rincon Hill area. Financial assistance will support employment  
16 development, job placement, job development, and other forms of economic capacity building  
17 for SOMA residents to ameliorate the effects of the economic displacement. The City benefits  
18 from having workers live near to their work places in reduced commute times for residents,  
19 and reduced traffic congestion and associated pollution.

20 I. Community cohesion: New development in the Rincon Hill area in such a vast  
21 quantity and of such a different character as currently exists will change the social fabric of the  
22 neighborhood. Programs to promote leadership development, community cohesion, and civic  
23 participation will also ameliorate the negative economic and social consequences of the new  
24 development in Rincon Hill on the residents and small businesses in Rincon Hill and the  
25 broader South of Market community.



1           SEC. ~~418.2.~~ 318.2. DEFINITIONS. See Section 401 of this Article, The following definitions  
2 *shall govern interpretation of this ordinance.*

3           ~~(a) "Child care facility." shall mean a child day care facility as defined in California Health~~  
4 ~~and Safety Code Section 1596.750.~~

5           ~~(b) "DBI" shall mean the Department of Building Inspection.~~

6           ~~(c) "DPW" shall mean the Department of Public Works.~~

7           ~~(d) "First certificate of occupancy" shall mean either a temporary certificate of occupancy or a~~  
8 ~~Certificate of Final Completion and Occupancy, as defined in San Francisco Building Code Section~~  
9 ~~109, whichever is issued first.~~

10           ~~(e) "Infrastructure" shall mean street paving, crosswalks, signs, medians, bulbouts, sidewalks,~~  
11 ~~trees, parks and open space, day care centers, libraries and community centers.~~

12           ~~(f) "Infrastructure fee." shall mean a monetary contribution based upon the cost to provide~~  
13 ~~infrastructure under this program.~~

14           ~~(g) "Low income." shall mean, for purposes of this ordinance, up to 80% of median, family~~  
15 ~~income for the San Francisco PMSA, as calculated and adjusted by the United States Department of~~  
16 ~~Housing and Urban Development (HUD) on an annual basis, except that as applied to housing-related~~  
17 ~~purposes such as the construction of affordable housing and the provision of rental subsidies with funds~~  
18 ~~from the SOMA Stabilization Fund established in Section 318.7 it shall mean up to 60% of median~~  
19 ~~family income for the San Francisco PMSA, as calculated and adjusted by the United States~~  
20 ~~Department of Housing and Urban Development (HUD) on an annual basis.~~

21           ~~(h) "MOCD" shall mean the Mayor's Office of Community Development.~~

22           ~~(i) "MOH" shall mean the Mayor's Office of Housing.~~

23           ~~(j) "Net addition of occupiable square feet of residential use." shall mean occupied floor area,~~  
24 ~~as defined in Section 102.10 of this Code, including bathrooms provided as part of dwelling units, to be~~  
25 ~~occupied by or primarily serving, residential use excluding common areas such as hallways, fitness~~

1 ~~centers and lobbies, less the occupied floor area in any structure demolished or rehabilitated as part of~~  
2 ~~the proposed residential development project which occupied floor area was used primarily and~~  
3 ~~continuously for residential use and was not accessory to any use other than residential use for at least~~  
4 ~~five years prior to Planning Department approval of the residential development project subject to this~~  
5 ~~Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

6 ~~(k) "Program." shall mean the Downtown Residential Community Improvements Neighborhood~~  
7 ~~Program.~~

8 ~~(l) "Program Area." shall mean those districts identified as Downtown Residential (DTR)~~  
9 ~~Districts in the Planning Code and on the Zoning Maps.~~

10 ~~(m) "Residential development project" shall mean any new construction, addition, extension,~~  
11 ~~conversion or enlargement, or combination thereof, of an existing structure which includes any~~  
12 ~~occupied floor area of residential use; provided, however, that for projects that solely comprise an~~  
13 ~~addition to an existing structure which would add occupied floor area in an amount less than 20~~  
14 ~~percent of the occupied floor area of the existing structure, the provisions of this Section shall only~~  
15 ~~apply to the new occupied square footage.~~

16 ~~(n) "Residential use." shall mean any structure or portion thereof intended for occupancy by~~  
17 ~~uses as defined in Section 890.88 of this Code and shall not include any use which qualifies as an~~  
18 ~~accessory use as defined and regulated in Sections 204 through 204.5.~~

19 ~~(o) "SOMA." shall mean the area bounded by Market Street to the north, Embarcadero to the~~  
20 ~~east, King Street to the south and South Van Ness and Division to the west.~~

21 ~~(p) "Sponsor" shall mean an applicant seeking approval for construction of a residential~~  
22 ~~development project subject to this Section and such applicant's successors and assigns.~~

23 ~~(q) Waiver Agreement." means an agreement acceptable in form and substance to the Planning~~  
24 ~~Department and the City Attorney, under which the City agrees to waive all or a portion of the~~  
25 ~~Community Improvements Impact Fee, conditioned upon the project sponsor's covenant to make a good~~

1 ~~faith effort to secure the formation of a Community Facilities (Mello-Roos) District, if such a district~~  
2 ~~has not already been successfully formed, and to take all steps necessary to support the construction of~~  
3 ~~a portion of the improvements described in Sections 318.6 (the "CFD Improvements") using the~~  
4 ~~proceeds of one or more series of special tax bonds or moneys otherwise made available by such a~~  
5 ~~district ("CFD Funds"). Such agreement shall include a specific description of the CFD Improvements~~  
6 ~~and a specific date for the commencement of such improvements. Such agreement shall also provide~~  
7 ~~that the project sponsor shall pay the full amount of the waived Community Improvements Impact Fee~~  
8 ~~in the event that CFD Funds are not received in amounts necessary to commence construction of the~~  
9 ~~CFD Improvements on the stated commencement date. The City also shall require the project sponsor~~  
10 ~~to provide a letter of credit or other instrument to secure the City's right to receive payment as~~  
11 ~~described in the preceding sentence.~~

12 SEC. ~~418.3~~ 318.3. APPLICATION.

13 (a) Application. Section 418.1 et seq. shall apply to any development project located in the  
14 Rincon Hill Community Improvements Program Area, which includes all properties zoned DTR. The  
15 Downtown Residential Community Improvements Neighborhood Program is hereby established and  
16 shall be implemented through district-specific community improvements funds which apply in the  
17 following downtown residential areas:

18 (i) ~~Properties identified as "Residential Mixed Use" in Map 3 (Land Use Plan) of the Rincon~~  
19 ~~Hill Area Plan of the San Francisco General Plan.~~

20 (b) Amount of Fees.

21 (1) The Rincon Hill Community Infrastructure Impact Fee shall be \$11.00 per net addition  
22 of occupiable square feet of residential use in any development project with a residential use in any  
23 development project with a residential use located within the Program Area; and

1           (2) The SOMA Community Stabilization Fee shall be \$14.00 per net addition of occupiable  
2 square feet of residential use in any development project with a residential use within the Program  
3 Area.

4           (d) The Community ~~Improvements~~ Infrastructure Impact Fee shall be revised effective  
5 January 1st of the year following the effective date of Section 418.1 et seq. ~~this ordinance~~ and on  
6 January 1st each year thereafter by the percentage increase or decrease in the construction  
7 cost of providing these improvements.

8           (c) ~~(e)~~ Option for In-Kind Provision of Community ~~Improvements~~ Infrastructure and Fee  
9 Credits. The Planning Commission ~~may shall~~ reduce the Community ~~Improvements~~ Infrastructure  
10 Impact Fee or SOMA Stabilization Fee owed ~~described in (b) above~~ for specific residential  
11 development ~~projects proposals~~ in cases where the Director has recommended approval and the a  
12 project sponsor has entered into an ~~In-Kind Improvements~~ Agreement with the City. ~~In-kind~~  
13 community improvements may only be accepted if they are improvements prioritized in the Rincon Hill  
14 Plan, meet identified community needs, and serve as a substitute for improvements funded by impact fee  
15 revenue such as street improvements, transit improvements, and community facilities. Open space or  
16 streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are  
17 not eligible as in-kind improvements. No proposal for in-kind community improvements shall be  
18 accepted that does not conform to the criteria above. Project sponsors that pursue In-Kind Community  
19 Agreements with the City will be charged time and materials for any additional administrative costs  
20 that the Department or any other City agency incurs in processing the request ~~to provide in-kind~~  
21 improvements in the form of streetscaping, sidewalk widening, neighborhood open space, community  
22 center, and other improvements that result in new public infrastructure and facilities described in  
23 Section 318.6 below.

24           (1) The Rincon Hill Community Infrastructure Impact Fee and SOMA Stabilization Fee may  
25 be reduced by the total dollar value of the community improvements provided through an In-Kind

1 Improvements Agreement recommended by the Director and approved by the Commission. For the  
2 purposes of calculating the total dollar value ~~of in-kind community improvements~~, the project  
3 sponsor shall provide the ~~Planning~~ Department with a cost estimate for the proposed in-kind  
4 community improvement(s) from two independent ~~contractors~~ sources or, if relevant, real estate  
5 appraisers. If the City has completed a detailed site-specific cost estimate for a planned improvement,  
6 this may serve as one of the cost estimates provided it is indexed to current cost of construction. Based  
7 on these estimates, the Director ~~of Planning~~ shall determine ~~their~~ the appropriate value of the  
8 in-kind improvements and the ~~Planning~~ Commission shall reduce the Rincon Hill Community  
9 Improvements Infrastructure Impact Fee or SOMA Stabilization Fee otherwise due by an equal  
10 amount assessed to that project proportionally. No credit shall be made for land value unless  
11 ownership of the land is transferred to the City or a permanent public easement is granted, the  
12 acceptance of which is at the sole discretion of the City.

13 (2) All In-Kind Improvement Agreements shall require the project sponsor to reimburse all  
14 City agencies for their administrative and staff costs in negotiating, drafting, and monitoring  
15 compliance with the In-Kind Improvements Agreement. The City shall also require the project sponsor  
16 to provide a letter of credit or other instrument, acceptable in form and substance to the Department  
17 and the City Attorney, to secure the City's right to receive improvements as described above.

18 (d) (f) Option for Provision of Community Improvements via a Community Facilities  
19 (Mello-Roos) District. The Planning Commission shall waive the Community ~~Improvements~~  
20 Infrastructure Impact Fee described in (b) above, either in whole or in part, for specific  
21 residential development proposals in cases where one or more project sponsors have entered  
22 into a Waiver Agreement with the City. Such waiver shall not exceed the value of the  
23 improvements to be provided under the Waiver Agreement. For purposes of calculating the  
24 total value of such improvements, the project sponsor shall provide the ~~Planning~~ Department  
25 with a cost estimate for the proposed in-kind community improvements from two independent

1 contractors. Based on these estimates, the Director of *Planning* shall determine their  
2 appropriate value.

3 (e) Timing of Fee Payments. The Rincon Hill Community Infrastructure Impact Fee and  
4 SOMA Stabilization Fee is due and payable to the Development Fee Collection Unit at DBI prior to  
5 issuance of the first construction document, with an option for the project sponsor to defer payment to  
6 prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge that  
7 would be paid into the appropriate fund in accordance with Section 107A.13.3 of the San Francisco  
8 Building Code.

9 ~~The sponsor shall pay to the Treasurer a Community Improvements Impact Fees of the~~  
10 ~~following amounts for each net addition of occupiable square feet of residential use.~~

11 ~~(i) Prior to the issuance by DBI of the first site or building permit for a residential development~~  
12 ~~project within the Program Area, an \$11.00 Community Improvement Impact Fee in the Rincon Hill~~  
13 ~~downtown residential area, as described in (a)(i) above, for the Rincon Hill Community Improvements~~  
14 ~~Fund.~~

15 ~~(ii) Prior to the issuance by DBI of a final certificate of occupancy for a residential~~  
16 ~~development project within the Program Area, a \$13.75 SOMA Community Stabilization Fee in the~~  
17 ~~Rincon Hill downtown residential area, as described in (a)(1) above for the SOMA Community~~  
18 ~~Stabilization Fund or provide to the City an irrevocable letter of credit in a form approved in advance~~  
19 ~~by the City Attorney to secure the payment of the \$13.75 Community Stabilization Fee within six~~  
20 ~~months from the date of issuance by the Director of DBI of a final certificate of occupancy for the~~  
21 ~~Rincon Hill Mitigation Fund, and prior to the issuance by DBI of the first site or building permit for a~~  
22 ~~residential development project within the Program Area, a \$.25 SOMA Community Stabilization Fee~~  
23 ~~in the Rincon Hill downtown residential area, as described in (a)(1) above for the SOMA Community~~  
24 ~~Stabilization Fund.~~

1           ~~(e) Upon payment of the Community Improvements Impact Fees in full to the Treasurer or~~  
2 ~~upon the execution of a Waiver Agreement and upon request of the sponsor, the Treasurer shall issue a~~  
3 ~~certification that the fee has been paid or a Waiver Agreement executed. The sponsor shall present such~~  
4 ~~certification to the Planning Department, and MOH prior to the issuance by DBI of the first site or~~  
5 ~~building permit for the residential development project. DBI shall not issue the site or building permit~~  
6 ~~without the Treasurer's certification. An failure of the Treasurer, DBI, or the Planning Department to~~  
7 ~~give any notice under this Section shall not relieve a sponsor from compliance with this Section. Where~~  
8 ~~DBI inadvertently issues a site or building permit without payment of the fee, DBI shall not issue any~~  
9 ~~certificate of occupancy for the project without notification from the Treasurer that the fees required by~~  
10 ~~this Section have been paid. The procedure set forth in this Subsection is not intended to preclude~~  
11 ~~enforcement of the provisions of this Section under any other section of this Code, or other authority~~  
12 ~~under the laws of the State of California.~~

13           ~~(f) (g) Waiver or Reduction.~~

14           ~~(1) A project applicant of any project subject to the requirements in this Section may appeal to~~  
15 ~~the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the~~  
16 ~~absence of any reasonable relationship or nexus between the impact of development and the amount of~~  
17 ~~the fee charged.~~

18           ~~(2) A project applicant subject to the requirements of this Section who has received an~~  
19 ~~approved building permit, conditional use permit or similar discretionary approval and who submits a~~  
20 ~~new or revised building permit, conditional use permit or similar discretionary approval for the same~~  
21 ~~property may appeal for a reduction, adjustment or waiver of the requirements with respect to the~~  
22 ~~square footage of construction previously approved.~~

23           ~~(3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later than~~  
24 ~~15 days after the date the sponsor is required to pay to the Treasurer the fee as required in Section~~  
25 ~~318.3(b). The appeal shall set forth in detail the factual and legal basis for the claim of waiver,~~

1 ~~reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60~~  
2 ~~days after the filing of the appeal. The appellant shall bear the burden of presenting substantial~~  
3 ~~evidence to support the appeal, including comparable technical information to support appellant's~~  
4 ~~position. The decision of the Board shall be by a simple majority vote and shall be final. If a reduction,~~  
5 ~~adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver,~~  
6 ~~adjustment, or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of~~  
7 ~~the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the~~  
8 ~~Treasurer.~~

9 (4) In the event that the Board of Supervisors grants a waiver or reduction under  
10 Section 408 of this Article Section, it shall be the policy of the Board of Supervisors that it shall  
11 adjust the percentage of inclusionary housing in lieu fees in ~~Planning Code~~ Section  
12 827(b)(5)(C) of this Code such that a greater percentage of the in lieu fees will be spent in  
13 SOMA with the result that the waiver or reduction under this Section shall not reduce the  
14 overall funding to the SOMA community.

15 SEC. 418.4 IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE AND SOMA  
16 STABILIZATION FEE.

17 (a) Determination of Requirements. The Department or Commission shall determine the  
18 applicability of Section 418.1 et seq. to any development project requiring a building or site permit  
19 and, if Section 418.1 et seq. is applicable, the amount of Community Infrastructure Impact and SOMA  
20 Stabilization Fees required and shall impose these requirements as a condition of approval for  
21 issuance of the building or site permit for the development project. The project sponsor shall supply  
22 any information necessary to assist the Department in this determination.

23 (b) Department's Notice to Development Fee Collection Unit of Requirements. Prior to  
24 issuance of a building or site permit for a development project subject to the requirements of Section  
25 418.1 et seq., the Department shall notify the Development Fee Collection Unit at DBI of its final



1 determination of the amount of Community Infrastructure and SOMA Stabilization Fees required,  
2 including any fee credits for in-kind improvements, in addition to the other information required by  
3 Section 402(b) of this Article.

4 (c) Development Fee Collection Unit's Notice to Department Prior to Issuance of the First  
5 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing  
6 and electronically to the Department prior to issuing the first certificate of occupancy for any  
7 development project subject to Section 418.1 et seq. that has elected to fulfill all or part of the  
8 requirement with an In-Kind Improvement Agreement. If the Department notifies the Unit at such time  
9 that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all  
10 certificates of occupancy until the subject project is brought into compliance with the requirements of  
11 Section 418.1 et seq.

12 (d) In the event that the Department or the Commission takes action affecting any  
13 development project subject to Section 418.1 et seq. and such action is subsequently modified,  
14 superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board  
15 of Supervisors, or by court action, the procedures of Section 402(c) shall be followed.

16 ~~SEC. 318.4. LIEN PROCEEDINGS.~~

17 ~~(a) A sponsor's failure to comply with the requirements of Sections 318.3, shall constitute~~  
18 ~~cause for the City to record a lien against all parcels used for the housing development project in the~~  
19 ~~sum of the fees required under this ordinance, Section 313.3. The fee required Section 318.3(b)(i) of~~  
20 ~~this ordinance is due and payable to the Treasurer prior to issuance of the first building or site permit~~  
21 ~~for the development project unless a Waiver Agreement has been executed. If, for any reason, the fee~~  
22 ~~remains unpaid following issuance of the permit and no Waiver Agreement has been executed, any~~  
23 ~~amount due shall accrue interest at the rate of one and one-half percent per month, or fraction thereof,~~  
24 ~~from the date of issuance of the permit until the date of final payment. The fee required by this~~  
25 ~~ordinance under Section 318.3(b)(ii) is due and payable to the Treasurer prior to issuance by the~~

1 ~~Director of DBI of a final certificate of occupancy or within six months after the issuance by the~~  
2 ~~Director of DBI of a final certificate of occupancy if the project sponsor has provided the City with an~~  
3 ~~irrevocable letter of credit under Section 318.3(b)(ii).~~

4 ~~If, for any reason, the fees remain unpaid six months following issuance of the final certificate~~  
5 ~~of occupancy, any amount due shall accrue interest at the rate of one and one-half percent per month,~~  
6 ~~or fraction thereof, from the date of issuance of the permit until the date of final payment.~~

7 ~~(b) If, for any reason, the fees imposed pursuant to this ordinance remain unpaid following~~  
8 ~~issuance of the permit, the Treasurer shall initiate proceedings in accordance with Article XX of~~  
9 ~~Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the fee,~~  
10 ~~including interest, a lien against all parcels used for the housing development project and shall send all~~  
11 ~~notices required by that Article to the owner of the property as well as the sponsor. The Treasurer shall~~  
12 ~~also prepare a preliminary report noting the sponsor of a hearing to confirm such report by the Board~~  
13 ~~of Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall contain~~  
14 ~~the sponsor's name, a description of the sponsor's housing development project, a description of the~~  
15 ~~parcels of real property to be encumbered as set forth in the Assessor's Map Books for the current year,~~  
16 ~~a description of the alleged violation of this ordinance, and shall fix a time, date, and place for hearing.~~  
17 ~~The Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the~~  
18 ~~parcels of real property subject to lien. Except for the release of lien recording fee authorized by~~  
19 ~~Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to this ordinance~~  
20 ~~shall be held in trust by the Treasurer and deposited in the Rincon Hill Community Improvements Fund~~  
21 ~~established in Section 313.6 or the SOMA Community Stabilization Fund established in Section 313.7~~  
22 ~~as appropriate.~~

23 ~~(c) Any notice required to be given to a sponsor or owner shall be sufficiently given or served~~  
24 ~~upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or owner~~  
25 ~~or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor or~~

1 owner at the official address of the sponsor or owner maintained by the Tax Collector for the mailing  
2 of tax bills or, if no such address is available, to the sponsor at the address of the housing development  
3 project, and to the applicant for the site or building permit at the address on the permit application.

4 ~~SEC. 318.5. COMMUNITY IMPROVEMENTS IMPACT FEE REFUND WHEN BUILDING~~  
5 ~~PERMIT EXPIRES PRIOR TO COMPLETION OF WORK AND COMMENCEMENT OF~~  
6 ~~OCCUPANCY.~~

7 ~~In the event a building permit expires prior to completion of the work on and commencement of~~  
8 ~~occupancy of a residential development project so that it will be necessary to obtain a new permit to~~  
9 ~~carry out any development, the obligation to comply with this ordinance shall be cancelled, and any~~  
10 ~~Community Improvements Impact Fee and any SOMA Community Stabilization Impact Fee previously~~  
11 ~~paid to the Treasurer shall be refunded. If and when the sponsor applies for a new permit, the~~  
12 ~~procedures set forth in this ordinance regarding payment of the Community Improvements Impact Fee~~  
13 ~~and SOMA Community Stabilization Impact Fee shall be followed.~~

14 SEC. ~~418.5~~ 318.6. RINCON HILL COMMUNITY IMPROVEMENTS FUND.

15 (a) There is hereby established a separate fund set aside for a special purpose  
16 entitled the Rincon Hill Community Improvements Fund ("Fund"). All monies collected by the  
17 ~~Development Fee Collection Unit at DBI Treasurer~~ pursuant to Section ~~418.3(e)~~ 318.3(b)(i) shall be  
18 deposited in a special fund maintained by the Controller. The receipts in the Fund are hereby  
19 appropriated in accordance with law to be used solely to fund public infrastructure subject to  
20 the conditions of this Section.

21 (b)(1) All monies deposited in the Fund shall be used solely to design, engineer,  
22 acquire, and develop neighborhood open spaces, streetscape improvements, a community  
23 center, and other improvements that result in new publicly-accessible facilities within the  
24 Rincon Hill Downtown Residential (DTR) District or within 250 feet of the District. These  
25 improvements shall be consistent with the Rincon Hill Public Open Space System as

1 described in Map 5 of the Rincon Hill Area Plan of the General Plan, and any Rincon Hill  
2 Improvements Plan that is approved by the Board of Supervisors in the future, except that  
3 monies from the Fund may be used by the Planning Commission to commission economic  
4 analyses for the purpose of revising the fee pursuant to Section ~~418.3~~ ~~318.3(d)~~ above, to  
5 complete a nexus study to demonstrate the relationship between residential development and  
6 the need for public facilities if this is deemed necessary, or to commission landscape  
7 architectural or other planning, design and engineering services in support of the proposed  
8 public improvements, provided they do not exceed a total of \$250,000.

9 (2) Notwithstanding ~~sub~~subsection (b)(1) above, \$6 million of the Fund shall be  
10 transferred to the SOMA Stabilization Fund described in Section ~~418.7~~ ~~318.7~~ to be used  
11 exclusively for the following expenditures: SOMA Open Space Facilities Development and  
12 Improvement; Community Facilities Development and Improvement; SOMA Pedestrian Safety  
13 Planning, Traffic Calming, and Streetscape Improvement; and Development of new affordable  
14 housing in SOMA. The Board of Supervisors finds that it is in the best interest of the City that  
15 the Rincon Hill Community Improvements be built. The Board of Supervisors further finds that  
16 the City will be able to build sufficient community improvements for the Rincon Hill Plan Area  
17 with the remainder of the money in the Rincon Hill Community Improvements Fund. In the  
18 event that the *Planning* Department demonstrates to the Board that the City is unable to build  
19 the contemplated community improvements for the Plan Area, it shall be City policy to  
20 designate funds from the general fund received from real estate transfer taxes and property  
21 taxes on new development generated under the Rincon Hill Plan Area Plan approved in this  
22 ordinance sufficient to finance the rest of the community improvements proposed for the  
23 Rincon Hill Plan Area.

24 (3) No portion of the Fund may be used, by way of loan or otherwise, to pay any  
25 administrative, general overhead, or similar expense of any public entity.

1 (c) The Controller's Office shall file an annual report with the Board of Supervisors  
2 beginning one year after the effective date of Section 418.1 et seq. ~~this ordinance~~, which report  
3 shall set forth the amount of money collected in the Fund. The Fund shall be administered by  
4 the Planning Commission.

5 (d) A public hearing shall be held by both the Planning and Recreation and Parks  
6 Commissions to elicit public comment on proposals for the acquisition of property using  
7 monies in the Fund or through agreements for in-kind or Community Facilities (Mello-Roos)  
8 District improvements as described above in Section 413.3 ~~313.3~~(d) and (e). Notice of public  
9 hearings shall be published in an official newspaper at least 20 days prior to the date of the  
10 hearing, which notice shall set forth the time, place, and purpose of the hearing. The hearing  
11 may be continued to a later date by a majority vote of the members of both Commissions  
12 present at the hearing. At a joint public hearing, a quorum of the Planning and Recreation and  
13 Parks Commissions may vote to allocate the monies in the Fund for acquisition of property for  
14 park use and/or for development of property for park use, or to approve projects proposed in  
15 connection with an agreement for in-kind or Community Facilities (Mello-Roos) District  
16 Improvements.

17 (e) The Planning Commission shall work with other City agencies and commissions,  
18 specifically the Department of Recreation and Parks, DPW ~~Department of Public Works~~, and the  
19 Metropolitan Transportation Agency, to develop agreements related to the administration of  
20 the development of new public facilities within public rights-of-way or on any acquired property  
21 designed for park use, using such monies as have been allocated for that purpose at a  
22 hearing of the Planning Commission.

23 (f) The Director ~~of Planning~~ shall have the authority to prescribe rules and  
24 regulations governing the Fund, which are consistent with Section 418.1 et seq. ~~this ordinance~~.

25 SEC. 418.7 ~~318.7~~. SOMA COMMUNITY STABILIZATION FUND.

1 (a) There is hereby established a separate fund set aside for a special purpose  
2 entitled the SOMA Community Stabilization Fund ("Fund"). All monies collected by DBI the  
3 Treasurer pursuant to Section 419.3 319.3(b)(ii) shall be deposited in a special fund maintained  
4 by the Controller. The receipts in the Fund are hereby appropriated in accordance with law to  
5 be used solely to address the effects of destabilization on residents and businesses in SOMA  
6 subject to the conditions of this Section.

7 (b) (1) All monies deposited in the Fund shall be used to address the impacts of  
8 destabilization on residents and businesses in SOMA including assistance for: affordable  
9 housing and community asset building, small business renta1 assistance, development of  
10 new affordable homes for rental units for low income households, rental subsidies for low  
11 income households, down payment assistance for home ownership for low income  
12 households, eviction prevention, employment development and capacity building for SOMA  
13 residents, job growth and job placement, small business assistance, leadership development,  
14 community cohesion, civic participation, and community based programs and economic  
15 development.

16 (2) Monies from the Fund may be appropriated by MOCD without additional  
17 approval by the Board of Supervisors to the Planning Commission or other City department or  
18 office to commission economic analyses for the purpose of revising the fee, to complete a  
19 nexus study to demonstrate the relationship between residential development and the need  
20 for stabilization assistance if this is deemed necessary, provided these expenses do not  
21 exceed a total of \$100.000. The receipts in the Fund may be used to pay the expenses of  
22 MOCD in connection with administering the Fund and monitoring the use of the Funds. Before  
23 expending funds on administration, MOCD must obtain the approval of the Board of  
24 Supervisors by Resolution.

1           (3)     Receipts in the Fund shall also be used to reimburse the *Planning* Department  
2 for conducting a study as follows. Within 60 days of the effective date of Section 418.1 et seq.  
3 ~~this ordinance~~ the *City Planning* Department shall commence a study on the impact, in nature  
4 and amount, of market rate housing development on the production of permanently affordable  
5 housing and recommend the range of possible fees to be paid by market rate housing  
6 developers to mitigate such impact should one be found. The Department shall make timely  
7 progress reports on the conduct of this study and shall submit the completed report along with  
8 recommendations for legislation to the Land Use & Economic Development Committee of the  
9 Board of Supervisors. This study is meant to accomplish the same purposes as the study  
10 authorized by the Board of Supervisors in Planning Code Section 415.8(e) ~~315.8(e)~~ and thus  
11 supersedes 415.8 (e) ~~4315.8(e)~~.

12           (c)     The Controller's Office shall file an annual report with the Board of Supervisors  
13 beginning one year after the effective date of Section 418.1 et seq. ~~this ordinance~~, which report  
14 shall set forth the amount of money collected in the Fund. The Fund shall be administered and  
15 expended by MOCD, but all expenditures shall first be approved by the Board of Supervisors  
16 through the legislative process. In approving expenditures from the Fund, MOCD and the  
17 Board of Supervisors shall accept any comments from the Community Advisory Committee,  
18 the public, and any relevant city departments or offices. Before approving any expenditures,  
19 the Board of Supervisors shall determine the relative impact from the development in the  
20 Rincon Hill Plan Area on the areas described in Section 418.7(b) ~~318.7(b)~~ and shall insure that  
21 the expenditures are consistent with mitigating the impacts from the development.

22           (d)     There shall be a SOMA Community Stabilization Fund Community Advisory  
23 Committee to advise MOCD and the Board of Supervisors on the administration of the Fund.

24           (1)     The Community Advisory Committee shall be composed of seven members  
25 appointed as follows:

1 (A) One member representing low-income families who lives with his or her family in  
2 SOMA, appointed by the Board of Supervisors.

3 (B) One member who has expertise in employment development and/or represents  
4 labor, appointed by the Board of Supervisors.

5 (C) One member who is a senior or disabled resident of SOMA, appointed by the  
6 Board of Supervisors.

7 (D) One member with affordable housing expertise and familiarity with the SOMA  
8 neighborhood, appointed by the Board of Supervisors

9 (E) One member who represents a community based organization in SOMA,  
10 appointed by the Board of Supervisors.

11 (F) One member who provides direct services to SOMA families, appointed by the  
12 Board of Supervisors.

13 (G) One member who has small business expertise and a familiarity with the SOMA  
14 neighborhood, appointed by the Board of Supervisors.

15 (2) The Community Advisory Committee shall comply with all applicable public  
16 records and meetings laws and shall be subject to the Conflict of Interest provisions of the  
17 City's Charter and Administrative Code. The initial meeting of the Advisory Committee shall be  
18 called within 30 days from the day the Board of Supervisors completes its initial appointments.  
19 MOCD shall provide administrative support to the Committee. The Committee shall develop  
20 annual recommendations to MOCD on the Expenditure Plan.

21 (3) The members of the Community Advisory Committee shall be appointed for a  
22 term of two years; provided, however, that the members first appointed shall by lot at the first  
23 meeting, classify their terms so that three shall serve for a term of one year and four shall  
24 serve for a term of two years. At the initial meeting of the Committee and yearly thereafter, the  
25 Committee members shall select such officer or officers as deemed necessary by the



1 Committee. The Committee shall promulgate such rules or regulations as are necessary for  
2 the conduct of its business under this Section. In the event a vacancy occurs, a successor  
3 shall be appointed to fill the vacancy consistent with the process and requirements to appoint  
4 the previous appointee. When a vacancy occurs for an reason other than the expiration of a  
5 term of office, the appointee to fill such vacancy shall hold office for the unexpired term of his  
6 or her predecessor. Any appointee who misses four meetings within a twelve-month period,  
7 without the approval of the Committee, shall be deemed to have resigned from the  
8 Committee.

9 (e) Within 90 days of the effective date of Section 418.1 et seq. ~~this ordinance~~, the  
10 Director of MOCD shall propose rules, regulations and a schedule for administrative support  
11 governing the Fund to the Board of Supervisors for its approval.

12 SEC. ~~418.6~~ 418.8. DIRECTOR OF PLANNING'S EVALUATION.

13 Within 18 months following the effective date of Section 418.1 et seq. ~~this ordinance~~, the  
14 Director of Planning and the Director of MOCD shall report to the Planning Commission, the  
15 Board of Supervisors, and the Mayor on the status of compliance with Section 418.1 et seq. ~~this~~  
16 ~~ordinance~~, the efficacy of Section 418.1 et seq. ~~this ordinance~~ in funding infrastructure and  
17 stabilization programs in the Program Area, and the impact of the Program on property values  
18 in the vicinity of the Project Area.

19 SEC. 418.7 ~~318.9~~. STUDIES.

20 (a) No later than July 1, 2010, and every five years thereafter, the Director of  
21 Planning shall complete a study to determine the demand for infrastructure to serve  
22 residential development projects in the downtown residential areas and, based on the study,  
23 recommend to the Board of Supervisors changes in the requirements for community  
24 improvement impact fees imposed on residential development in Section 418.1 et seq. ~~this~~  
25 ~~ordinance~~ if necessary to help meet that demand.

1 (b) No later than July 1, 2010, and every five years thereafter, the Director of MOCD  
2 or his or her designee shall complete a study to determine the demand for stabilization  
3 programs in the SOMA area and, based on the study, recommend to the Board of Supervisors  
4 changes in the requirements for Rincon Hill community stabilization impact fees imposed on  
5 residential development in Section 418.1 et seq. ~~this ordinance~~ if necessary to help meet that  
6 demand.

7 SEC. 419 (formerly Section 319). HOUSING REQUIREMENTS FOR RESIDENTIAL  
8 DEVELOPMENT PROJECTS IN THE UMU ZONING DISTRICTS OF THE EASTERN  
9 NEIGHBORHOODS AND THE LAND DEDICATION ALTERNATIVE IN THE MISSION NCT  
10 DISTRICT. Sections 419.1 through 419.6, hereafter referred to as Section 419.1 et seq., set forth the  
11 housing requirements for residential development projects in the UMU Zoning Districts of the Eastern  
12 Neighborhoods and the Land Dedication Alternative in the Mission NCT District. The effective date of  
13 these requirements shall be either December 19, 2008, which is the date that the requirements  
14 originally became effective, or the date a subsequent modification, if any, became effective.

15 SEC. 419.1 ~~319.1~~. FINDINGS.

16 A. (a) Need for New Housing and Other Land Uses. San Francisco is experiencing a  
17 severe shortage of housing available to people at all income levels. In addition, San Francisco  
18 has an ongoing affordable housing crisis. Many future San Francisco workers will be earning  
19 below 80% of the area's median income, and even those earning moderate or middle  
20 incomes, above the City's median, are likely to need assistance to continue to live in San  
21 Francisco. In 2007, the median income for a family of four in the city was about \$86,000. Yet  
22 median home prices suggest that nearly twice that income is needed to be able to a dwelling  
23 suitable for a family that size. Only an estimated 10% of households in the city can afford a  
24 median-priced home.

1 The Association of Bay Area Governments' (ABAG) Regional Housing Needs  
2 Determination (RHND) forecasts that San Francisco must produce over 31,000 new units in  
3 the next five years, or over 6,000 new units of housing annually, to meet projected needs. At  
4 least 60%, or over 18,000, of these new units should be available to households of very low,  
5 low, and moderate incomes. With land in short supply in the City, it is increasingly clear that  
6 the City's formerly industrial areas offer a critical source of land where this great need for  
7 housing, particularly affordable housing, can be partially addressed.

8 B. (b) Target Area For New Housing. San Francisco's Housing Element establishes the  
9 Eastern Neighborhoods as a target area for development of new housing to meet San  
10 Francisco's identified housing targets. The release of some of the area's formerly industrial  
11 lands, no longer needed to meet current industrial or PDR needs, offers an opportunity to  
12 achieve higher affordability, and meet a greater range of need. The Mission, Showplace  
13 Square - Potrero Hill, East SoMa and Central Waterfront Area Plans of the General Plan  
14 (Eastern Neighborhoods Plans) thereby call for creation of new zoning intended specifically to  
15 meet San Francisco's housing needs, through higher affordability requirements and through  
16 greater flexibility in the way those requirements can be met.

17 New affordable units are currently funded through a variety of sources, including  
18 inclusionary housing and in lieu fees leveraged by new market rate residential development  
19 pursuant to Sections ~~413 313~~ and ~~415 315~~; as well as City, State, and federal funding. Using  
20 these existing sources, the Planning Department projects that approximately 1,000 to 1,500  
21 new units of affordable housing will be developed in the Eastern Neighborhoods.

22 Recognizing that this number of affordable units is not sufficient, the Plans call for  
23 further measures beyond the existing inclusionary requirements and Citywide funding,  
24 including new funding sources for affordable housing programs such as an impact fee; and  
25 new zoning districts in formerly industrial areas which require deeper affordability.

1            C. (e) Requirements for New Development To Contribute Towards Housing

2 Objectives. A key policy goal of the Eastern Neighborhoods Plans is to provide a significant  
3 amount of new housing affordable to low, moderate and middle income families and  
4 individuals, along with "complete neighborhoods" that provide appropriate amenities for these  
5 new residents. The Plans obligate all new development within the Eastern Neighborhoods to  
6 contribute towards these goals, by providing a contribution towards affordable housing needs  
7 and by paying for a reasonable share of their impact on the neighborhood's infrastructure.  
8 They further require new development in transitioning formerly industrial areas to contribute a  
9 higher share towards the City's exponentially high affordability needs.

10            To address the full range of housing needs of all income categories, including low,  
11 moderate and middle income families and individuals, the Plans provide programs which  
12 address all of these income levels, as follows:

13            (1)    Low: Current housing programs funded by federal and State funds, private  
14 equity raised through Low-Income Housing Tax Credits, and local funds such as inclusionary  
15 in-lieu and Jobs-Housing Linkage fees and run by MOH ~~the Mayor's Office of Housing~~ and the  
16 San Francisco Redevelopment Agency fund affordable housing primarily at very low and low  
17 income levels, to households making below 80% of the area median income; but due to the  
18 low supply and high costs of land in the City, are at a disadvantage for sites upon which to  
19 provide such housing. An alternative to the city's Inclusionary Housing Program will allow  
20 developers to dedicate sites for very low and low income level units.

21            (2)    Moderate: The City's Inclusionary Housing Program funds affordable housing  
22 primarily at the moderate income levels through on-site provision of below-market rate units,  
23 to households making between 80% and 120% of the San Francisco median income.  
24 Continuation and expansion of the Inclusionary Housing Program will allow provision of these  
25 moderate income units to increase.

1 (3) Middle: The City has no current programs to fund affordable housing to those at  
2 "middle" income levels, below the 200% area median income level estimated to be required to  
3 purchase market rate housing yet above the 120% threshold required for the City's  
4 Inclusionary Housing Program. An alternative to the city's Inclusionary Housing Program will  
5 allow developers to provide "middle" income level units.

6 The Eastern Neighborhoods Plans structure requirements and fees by tiers to ensure  
7 feasibility. This feasibility amount remains below the nexus established in the Residential  
8 Nexus Analysis. April 2007, on file with the Planning Department. *The following housing  
9 requirement tiers are created in the UMU Zoning Districts of the Eastern Neighborhoods, and included  
10 as a notation on each parcel in the Planning Department's Parcel Information System:*

11 •~~Tier A. Sites within the UMU which do not receive zoning changes that increase heights, as  
12 compared to allowable height prior to the rezoning (May 2008).~~

13 •~~Tier B. Sites within the UMU which receive zoning changes that increase heights by one to  
14 two stories.~~

15 •~~Tier C. Sites within the UMU which receive zoning changes that increase heights by three or  
16 more stories.~~

17 Within these districts, new development of market-rate housing will be required to meet  
18 affordable housing requirements above the City's ordinary affordable housing requirements  
19 for Residential And Live/Work Development Projects (Section ~~415 315~~), as described in  
20 Sections ~~419A.2 – 419A.4 319A.2-319A.4~~. These housing requirements may be met through  
21 increased inclusionary requirements under the City's traditional Inclusionary Program, or  
22 through alternative methods contained herein.

23 SEC. ~~419.2 319.2~~. DEFINITIONS. *(a) In addition to the definitions set forth in Section 401 of  
24 this Article, ~~t~~The following definitions shall supplement the definitions contained within Section 315.1,  
25 and shall govern interpretation of this ordinance:*

1           (f) — ~~"Affordable to qualifying middle income households" shall mean:~~

2           (1) — ~~With respect to owned units, the average purchase price on the initial sale of all~~  
3 ~~qualifying middle income units shall not exceed the allowable average purchase price deemed~~  
4 ~~acceptable for households with an annual gross income equal to or less than the qualifying limits for a~~  
5 ~~household of middle income, adjusted for household size. This purchase price shall be based on~~  
6 ~~household spending of 35% of income for housing, and shall only apply to initial sale, and not for the~~  
7 ~~life of the unit.~~

8           (2) — ~~With respect to rental units, the average annual rent including the cost of utilities paid~~  
9 ~~by the tenant according to the HUD utility allowance established by the San Francisco Housing~~  
10 ~~Authority for qualifying middle income units shall not exceed the allowable average purchase price~~  
11 ~~deemed acceptable for households with an annual gross income equal to or less than the qualifying~~  
12 ~~limits for a household of middle income, adjusted for household size. This price restriction shall exist~~  
13 ~~for the life of the unit.~~

14           (a) — ~~"Middle Income Household" shall mean a household whose combined annual gross~~  
15 ~~income for all members is between 120 percent and 150 percent of the local median income for the City~~  
16 ~~and County of San Francisco, as calculated by the Mayor's Office of Housing using data from the~~  
17 ~~United States Department of Housing and Urban Development (HUD) and adjusted for household size~~  
18 ~~or, if data from HUD is unavailable, as calculated by the Mayor's Office of Housing using other~~  
19 ~~publicly available and credible data and adjusted for household size.~~

20           (e) — ~~"Dedicated" shall mean legally transferred to the City and County of San Francisco,~~  
21 ~~including all relevant legal documentation, at no cost to the City.~~

22           (d) — ~~"Dedicated site" shall mean the portion of site proposed to be legally transferred at no~~  
23 ~~cost to the City and County of San Francisco under the requirements of this section.~~

1           (e) ~~—"Principal site" shall mean the total site proposed for development, including the~~  
2 ~~portion of site proposed to be legally transferred to the City and County of San Francisco under the~~  
3 ~~requirements of this section.~~

4           (g)(1) "Rental Housing Project" shall mean a project consisting solely of rental housing  
5 units, as defined in Section 415.1(37) ~~315.1(37)~~ that meets the following requirements:

6           (A) ~~(1)~~ The units shall be rental housing for not less than 30 years from the issuance of  
7 the certificate of occupancy pursuant to an agreement between the developer and the City.  
8 This agreement shall be in accordance with applicable State law governing rental housing;

9           (B) ~~(2)~~ A Notice of Special Restrictions (NSR), with the City as a third party beneficiary  
10 and subject to written approval of the Director, shall be recorded on the title of the property  
11 prior to final map approval containing the terms of the agreement described above in  
12 subsection (1). Once the agreement is recorded against the property, the NSR shall  
13 terminate.

14           (2) "Tier A." Sites within the UMU which do not receive zoning changes that increase  
15 heights, as compared to allowable height prior to the rezoning (May 2008).

16           (3) "Tier B." Sites within the UMU which receive zoning changes that increase heights by  
17 one to two stories.

18           (4) "Tier C." Sites within the UMU which receive zoning changes that increase heights by  
19 three or more stories.

20           (b) ~~—"Total developable site area" shall mean that part of the site that can be feasibly~~  
21 ~~developed as residential development, excluding land already substantially developed, parks, required~~  
22 ~~open spaces, streets, alleys, walkways or other public infrastructure.~~

23           SEC. 419.3 ~~319.3~~. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS .

1           (a) Section ~~319.3 of 419.1 et seq. this Ordinance~~ shall apply to any housing project  
2 located in the UMU Zoning District of the Eastern Neighborhoods, that is subject to the  
3 requirements of Section ~~415 315~~ et seq.

4           ~~SEC. 319.4. HOUSING REQUIREMENTS FOR UMU DISTRICTS.~~

5           (b) ~~(a)~~ Additional UMU Affordable Housing Requirements to the Section 415 for the  
6 Inclusionary Affordable Housing Program Requirements Component. The requirements of  
7 Section ~~s 415 315~~ through ~~415.9 315.9~~ shall apply subject to the following exceptions:

8           (1) For all projects sites designated as Tier A, a minimum of 18 percent of the total  
9 units constructed shall be affordable to and occupied by qualifying persons and families as  
10 defined elsewhere in this Code, so that a project ~~sponsor applicant~~ must construct .18 times the  
11 total number of units produced in the principal project beginning with the construction of the  
12 fifth unit. If the total number of units is not a whole number, the ~~sponsor project applicant~~ shall  
13 round up to the nearest whole number for any portion of .5 or above.

14           (A) If the project ~~sponsor applicant~~ elects pursuant to Section ~~415.4(c)(2) 315.4(e)~~, to  
15 build off-site units to satisfy the requirements of this program, the ~~sponsor project applicant~~ shall  
16 construct 23 percent so that a ~~sponsor project applicant~~ must construct .23 times the total  
17 number of units produced in the principal project beginning with the construction of the fifth  
18 unit. If the total number of units is not a whole number, the ~~sponsor project applicant~~ shall round  
19 up to the nearest whole number for any portion of .5 or above.

20           (B) If the project ~~sponsor applicant~~ elects pursuant to Section ~~415.4(c)(3) 315.4(e)(2)~~ to  
21 pay an in lieu fee to satisfy the requirements of this program, the ~~sponsor applicant~~ shall meet  
22 the requirements of Section ~~415 315~~ according to the number of units required above if the  
23 project applicant were to elect to meet the requirements of this ~~s~~Section by off-site housing  
24 development. For the purposes of this ~~s~~Section, the City shall calculate the fee using the direct  
25



1 fractional result of the total number of units multiplied by the percentage of off-site housing  
2 required, rather than rounding up the resulting figure as required by Section ~~415.6(a)~~ ~~315.5(a)~~.

3 (2) For all project sites designated Tier B, a minimum of 20 percent of the total units  
4 constructed shall be affordable to and occupied by qualifying persons and families as defined  
5 elsewhere in this Code, so that a project ~~sponsor applicant~~ must construct .20 times the total  
6 number of units produced in the principal project beginning with the construction of the fifth  
7 unit. If the total number of units is not a whole number, the ~~sponsor project applicant~~ shall round  
8 up to the nearest whole number for any portion of .5 or above.

9 (A) If the project ~~sponsor applicant~~ elects pursuant to Section ~~415.4(c)(2)~~ ~~315.4(e)~~, to  
10 build off-site units to satisfy the requirements of this program, the ~~sponsor project applicant~~ shall  
11 construct 25 percent so that a ~~sponsor project applicant~~ must construct .25 times the total  
12 number of units produced in the principal project beginning with the construction of the fifth  
13 unit. If the total number of units is not a whole number, the ~~sponsor project applicant~~ shall round  
14 up to the nearest whole number for any portion of .5 or above.

15 (B) If the project ~~sponsor applicant~~ elects pursuant to Section ~~415.4(c)(3)~~ ~~315.4(e)(2)~~ to  
16 pay an in-lieu fee to satisfy the requirements of this program, the ~~sponsor applicant~~ shall meet  
17 the requirements of Section ~~415~~ ~~315~~ according to the number of units required above if the  
18 ~~sponsor project applicant~~ were to elect to meet the requirements of this ~~s~~Section by off-site  
19 housing development. For the purposes of this ~~s~~Section, the City shall calculate the fee using  
20 the direct fractional result of the total number of units multiplied by the percentage of off-site  
21 housing required, rather than rounding up the resulting figure as required by Section ~~415.6(a)~~  
22 ~~315.5(a)~~.

23 (3) For all project sites designated Tier C, a minimum of 22 percent of the total units  
24 constructed shall be affordable to and occupied by qualifying persons and families as defined  
25 elsewhere in this Code, so that a project ~~sponsor applicant~~ must construct .22 times the total

1 number of units produced in the principal project beginning with the construction of the fifth  
2 unit. If the total number of units is not a whole number, the ~~sponsor project applicant~~ shall round  
3 up to the nearest whole number for any portion of .5 or above.

4 (A) If the project ~~sponsor applicant~~ elects pursuant to Section ~~415.4(c)(2)~~ ~~315.4(e)~~, to  
5 build off-site units to satisfy the requirements of this program, the ~~sponsor project applicant~~ shall  
6 construct 27 percent so that a ~~sponsor project applicant~~ must construct .27 times the total  
7 number of units produced in the principal project beginning with the construction of the fifth  
8 unit. If the total number of units is not a whole number, the ~~sponsor project applicant~~ shall round  
9 up to the nearest whole number for any portion of .5 or above.

10 (B) If the project ~~sponsor applicant~~ elects pursuant to Section ~~415.4(c)(3)~~ ~~315.4(e)(2)~~ to  
11 pay an in-lieu fee to satisfy the requirements of this program, the ~~sponsor applicant~~ shall meet  
12 the requirements of Section ~~415~~ ~~315~~ according to the number of units required above if the  
13 ~~sponsor project applicant~~ were to elect to meet the requirements of this ~~s~~Section by off-site  
14 housing development. For the purposes of this ~~s~~Section, the City shall calculate the fee using  
15 the direct fractional result of the total number of units multiplied by the percentage of off-site  
16 housing required, rather than rounding up the resulting figure as required by Section ~~415.6(a)~~  
17 ~~315.5(a)~~.

18 (c) Timing and Payment of Fee. Any fee required by Section 419.1 et seq. shall be paid to  
19 the Development Fee Collection Unit at DBI prior to issuance of the first construction document, with  
20 an option for the project sponsor to defer payment to prior to issuance of the first certificate of  
21 occupancy upon agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San  
22 Francisco Building Code.

23 SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.

24 (a) The Department shall determine the applicability of Section 419.1 et seq. to any  
25 development project requiring a building or site permit and, if Section 419.1 et seq. is applicable, the

1 additional affordable housing required pursuant to Section 419.1 et seq. and shall impose these  
2 requirements as condition on the approval for issuance of the building or site permit. The project  
3 sponsor shall supply any information necessary to assist the Department in this determination..

4 (b) Notice to Development Fee Collection Unit of Requirements. After the Department has  
5 made its final determination of the additional affordable housing required pursuant to Section 419.1 et  
6 seq., it shall immediately notify the Development Fee Collection Unit at DBI of its determination in  
7 addition to the other information required by Section 402(b) of this Article.

8 (c) Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site permit  
9 for a development project subject to the requirements of Section 419.1 et seq., the sponsor of the  
10 development project shall select one of the options described in Section 419.3 above or the alternatives  
11 described in Section 419.5 below to fulfill the affordable housing requirements and notify the  
12 Department of their choice.

13 (d) Department Notice to Development Fee Collection Unit of Sponsor Choice. After the  
14 sponsor has notified the Department of their choice to fulfill the additional affordable housing  
15 requirements of Section 419.1 et seq., the Department shall immediately notify the Development Fee  
16 Collection Unit at DBI of the sponsor's choice.

17 (e) The Development Fee Collection Unit Notice to Department Prior to Issuance of the  
18 First Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in  
19 writing or electronically to the Department prior to issuing the first certificate of occupancy for any  
20 development project subject to Section 419.1 et seq. that has elected to fulfill its requirement with an  
21 option other than payment of an in-lieu fee. If the Department notifies the Unit at such time that the  
22 sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of  
23 occupancy until the subject project is brought into compliance with the requirements of Section 419.1  
24 et seq.

1           (f) Process for Revisions of Determination of Requirements. In the event that the  
2 Department or the Commission takes action affecting any development project subject to Section 419.1  
3 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department  
4 or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of  
5 Section 402(c) of this Article shall be followed.

6           SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT.

7           (a) ~~(b)~~ Alternatives to the Inclusionary Housing Component. In addition to the  
8 alternatives specified in Section 415.4(c) ~~315.4(e)~~, (and further described above and in Section  
9 415.6 ~~315.5~~, Compliance Through Off-Site Housing Development, and Section 415.7 ~~315.6~~.  
10 Compliance Through In-Lieu Fee), and described further above, the project sponsor may elect  
11 to satisfy the requirements of Section 415.5 ~~315.4~~ by one of the alternatives specified in this  
12 Section. The project sponsor has the choice between the alternatives and the Planning  
13 Commission may not require a specific alternative. The project sponsor must elect an  
14 alternative before it receives project approvals from the Planning Commission or Planning  
15 Department and that alternative will be a condition of project approval. The alternatives are as  
16 follows:

17           (1) Middle Income Alternative. On sites with less than 50,000 square feet of total  
18 developable area, applicants may provide units as affordable to qualifying "middle income"  
19 households as follows:

20           (A) A minimum percent of the total units constructed shall be affordable to and  
21 occupied affordable to qualifying "middle income" households upon initial sale, according the  
22 schedule in Table 419A.4 ~~319A.4~~. If the total number of units is not a whole number, the project  
23 applicant shall round up to the nearest whole number for any portion of .5 or above. Units  
24 shall be affordable to households between 120 percent and 150 percent of the San Francisco  
25

1 Area Median Income, with an average affordability level of 135 percent for all units provided  
2 through this alternative.

3 (B) Where market rate sales prices exceed restricted sales prices, the difference  
4 between the market rate sales prices and the restricted sales prices shall be held by the  
5 Mayor's Office of Housing as a silent second mortgage according to the Procedures Manual.  
6 The City shall hold a deed of trust and promissory note for the second mortgage. ~~MOH The~~  
7 ~~Mayor's Office of Housing~~ shall hold this mortgage shall release it when the original note and  
8 proportional share of the appreciation are paid in full to the City.

9 (C) Units shall initially be sold at or below prices to be determined by ~~MOH the~~  
10 ~~Mayor's Office of Housing~~ in the Conditions of Approval or Notice of Special Restrictions  
11 according to the formula specified in the Procedures Manual to make them affordable to  
12 middle income households. Upon resale, the seller shall be permitted to sell the units at their  
13 market price. The City will waive its right of first refusal to the seller when the promissory note  
14 and deed of trust are paid, along with the City's share of the appreciation of the unit. The  
15 promissory note shall accrue no interest and shall require no monthly payments.

16 (D) Upon first resale, the seller shall have a right to keep a percentage of the total  
17 appreciation of the unit proportional to every year the original seller owns the unit as an owner  
18 occupant. The remainder of the proceeds of the sale, after the ~~1st~~ first mortgage, the second  
19 mortgage, and any other subordinate financing is paid off, shall be repaid to ~~MOH the Mayor's~~  
20 ~~Office of Housing~~. Detailed resale procedures shall be specified in the Middle Income Housing  
21 Procedures Manual published by ~~MOH the Mayor's Office of Housing~~ and approved by the  
22 Planning Commission. The Director of ~~MOH the Mayor's Office of Housing~~ shall amend the  
23 Procedures Manual as needed with the ~~Planning~~ Commission's approval.

24 (E) The City shall monitor units provided under this option during the 2- and 5-year  
25 Monitoring Report specified in ~~Planning Code~~ Section 342 of this Code and in separate

1 resolution. Should this monitoring report indicate that units constructed under this program do  
2 not meet the programs stated goals of providing affordable housing to Middle Income  
3 Households, the Planning Department and *MOH Mayor's Office of Housing* shall consider  
4 changes to this program, including, but not limited to, legislative changes.

5 (F) If the project sponsor elects to satisfy the requirements of Section 415.5 ~~315.4~~  
6 and of this Section by the alternative specified above, the requirement that 40 percent of the  
7 total number of proposed dwelling units shall contain at least two bedrooms may be waived  
8 provided the minimum percent of total units affordable to qualifying "middle income" as  
9 required by Table 419A.4 ~~319A.4~~ is increased by 10%.

10 (2) Land Dedication Alternative. Applicants may dedicate a portion of the total  
11 developable area of the principal site to the City and County of San Francisco for the purpose  
12 of constructing units affordable to qualifying households. A minimum percentage of  
13 developable area, representing an equivalent percent of total potential units to be constructed,  
14 shall be dedicated to the City according the schedule in Table 419A.4 ~~319A.4~~. To meet the  
15 requirements of this alternative, the developer must convey title to land in fee simple absolute  
16 to *MOH the Mayor's Office of Housing* according to the Procedures Manual, provided the  
17 dedicated site is deemed of equivalent or greater value to the principal site per those  
18 procedures and is in line with the following requirements:

19 (A) The dedicated site will result in a total amount of inclusionary units not less than  
20 forty (40) units. *MOH The Mayor's Office of Housing* may conditionally approve and accept  
21 dedicated sites which result in no less than twenty-five (25) units at its discretion.

22 (B) The dedicated site will result in a total amount of inclusionary units that is  
23 equivalent or greater than the minimum percentage of the units that will be provided on the  
24 principal site, as required by Table 419A.4 ~~319A.4~~. *MOH The Mayor's Office of Housing* may also  
25 accept dedicated sites that represent the equivalent of or greater than the required

1 percentage of units for all units be provided on a collective of sites within a one-mile radius,  
2 provided the total amount of inclusionary units provided on the dedicated site is equivalent to  
3 or greater than the total requirements for all principal sites participating in the collective,  
4 according to the requirements of Table 419A.4 ~~319A.4~~.

5 (C) The dedicated site is suitable from the perspective of size, configuration,  
6 physical characteristics, physical and environmental constraints, access, location, adjacent  
7 use, and other relevant planning criteria. The site must allow development of affordable  
8 housing that is sound, safe and acceptable.

9 (D) The dedicated site includes infrastructure necessary to serve the inclusionary  
10 units, including sewer, utilities, water, light, street access and sidewalks.

11 (E) The developer must submit full environmental clearance for the dedicated site  
12 before the land can be considered for conveyance, and before a first site or building permit  
13 may be conferred upon the principal project.

14 (F) The City may accept dedicated sites that vary from the minimum threshold  
15 provided such a dedication is deemed generally equivalent to the original requirement by the  
16 Mayor's Office of Housing.

17 (G) The City may accept dedicated sites that meet the above requirements in  
18 accordance with the Procedures Manual, in combination with in-lieu fees or on-site units,  
19 provided such a combination is deemed generally equivalent by MOH ~~the Mayor's Office of~~  
20 ~~Housing~~ to the original requirement.

21 (H) The project applicant has a letter from MOH ~~the Mayor's Office of Housing~~  
22 verifying acceptance of site before it receives project approvals from the Planning  
23 Commission or Planning Department, which shall be used to verify dedication as a condition  
24 of approval.

(I) If the project sponsor elects to satisfy the requirements of Section ~~415.5~~ ~~315.4~~ and of this Section by the alternative specified above, the requirement that 40 percent of the total number of proposed dwelling units shall contain at least two bedrooms may be waived.

(J) The Land Dedication Alternative may be satisfied through the dedication to the City of air space above or adjacent to the project, upon the approval of ~~MOH~~ ~~the Mayor's Office of Housing~~, or a successor entity, and provided the other requirements of subsection ~~(b)~~ ~~(a)(2)(A)-(I)~~ are otherwise satisfied.

TABLE ~~419A.4~~ ~~319A.4~~  
 HOUSING REQUIREMENTS FOR THE UMU DISTRICT

Tier	On-Site Housing Requirement	Off-Site/ In-Lieu Requirement	Middle Income Alternative*	Land Dedication Alternative for sites that have less than 30,000 square feet of developable area	Land Dedication Alternative for sites that have at least 30,000 square feet of developable area
A	18%	23%	30%	35%	30%



B	20%	25%	35%	40%	35%
C	22%	27%	40%	45%	40%

\*Requirement increases by 5% if two-bedroom requirement is waived.

(b) (e) Rental Incentive. Qualified rental housing projects, as defined in Section ~~419A.2(g)~~ ~~319A.2(g)~~, are allowed a reduction in their inclusionary housing requirements as follows:

(1) If the rental housing project chooses to meet its inclusionary housing requirements through on-site construction, off-site construction, or an in-lieu fee, then the project is entitled to a 3% reduction in the requirements specified above in subsection (a).

(2) If the rental housing project chooses to meet its inclusionary housing requirements through the land dedication option for projects less than 30,000 square feet, then the project is entitled to a 5% reduction in the requirements specified above in the subsection (b)(2).

(3) In addition, a rental housing project shall receive a fee waiver from the Eastern Neighborhood Public Benefit Fee as set forth in Section ~~427.3~~ ~~327.3~~ in the amount of \$1.00 per gross square foot.

(4) No rental incentive shall be provided for project that chooses the land dedication alternative for projects over 30,000 square feet.

(c) (d) Adjustments to Requirements for the Inclusionary Housing Component. This Section is intended to incorporate, rather than supersede, any changes made to Planning Code Sections ~~415~~ ~~315~~. In the instance that the base requirements of Section ~~415~~ ~~315~~ are

1 amended, the above-noted requirements shall be reviewed, and if appropriate, amended  
2 and/or increased accordingly.

3 SEC. ~~419.6~~ ~~319.5~~. LAND DEDICATION ALTERNATIVE IN THE MISSION NCT  
4 DISTRICT. The Land Dedication alternative is available for any project within the Mission NCT  
5 District under the same terms and conditions as provided for in Section 419 ~~319A.4(b)(2)(A)~~ -  
6 (J).

7 SEC. (~~420 formerly Section~~ 318.10). VISITACION VALLEY COMMUNITY FACILITIES  
8 AND INFRASTRUCTURE FEE AND FUND.

9 Sections ~~420.1~~ ~~318.10~~ through ~~420.5~~ ~~318.17~~, *hereafter referred to as Section 420.1 et seq.*,  
10 set forth the requirements and procedures for the Visitacion Valley Community Facilities and  
11 Infrastructure Fee and Fund. *The effective date of these requirements shall be either November 18,*  
12 *2005, which is the date that the requirements originally became effective, or the date a subsequent*  
13 *modification, if any, became effective.*

14 SEC. ~~420.1~~ ~~318.11~~. FINDINGS *AND POLICY*.

15 A. (~~a~~) A number of large sites in Visitacion Valley are targeted for substantial changes  
16 of use. Currently there are three applications pending at the City's Planning Department to  
17 develop Executive Park, originally planned as an office complex, into a large housing  
18 development. In addition, the City has drafted plans for Schlage Lock, long an industrial site,  
19 to be transformed into a major mixed-use housing development. Together, these sites would  
20 represent over 2,000 new units of housing in areas previously contemplated for office and  
21 industrial activities.

22 For the past thirty years, Executive Park has been the subject of several proposals and  
23 development plans. The first Executive Park Development Plan, developed in 1978,  
24 considered a development of 833,000 square feet of office space, 174,000 square feet of  
25 hotel/meeting space, and 75,000 square feet of retail space. Building permits were issued for

1 the construction of four office buildings and a restaurant under this plan. Three of the office  
2 buildings were constructed by 1985, for a total of about 320,000 square feet of office space  
3 and 2,500 square feet of retail space. The fourth office building and the restaurant have yet to  
4 be constructed.

5 In 1983, a revised development plan was proposed to amend the previous 1978  
6 Development Plan by adding additional office space and hotel space, and by adding  
7 residential use. Overall, and including the four office buildings and the restaurant previously  
8 approved, the 1984 Development Plan Amendment called for 1,644,000 square feet of office  
9 space, 234,000 square feet of hotel space, 50,000 square feet of retail/restaurant spaces, and  
10 600 residential units.

11 A 1992 Development Plan added 25,000 square feet of health club space, 10,000  
12 square feet of childcare space, and an additional 10,000 square feet of restaurant space.  
13 Following this approval, building permits were issued for the construction of five residential  
14 buildings, containing about 287 units. Only two of the residential buildings, containing 128  
15 units, have been constructed.

16 At present, Executive Park consists of three office buildings containing 320,000 square  
17 feet of office space and 2,500 square feet of retail space, and two residential buildings  
18 containing 128 residential units. Since 2003, three project sponsors have filed applications to  
19 develop over 1,300 new units of housing, totaling 1,709,000 square feet of residential use. To  
20 accommodate these projects, the Planning Commission has forwarded a General Plan  
21 Amendment to the Board of Supervisors that would allow for an additional 499 residential  
22 units while eliminating 1,324,000 square feet of office space, 10,000 square feet of retail  
23 space, and 25,000 square feet of health club use. In addition, the General Plan Amendment  
24 would reduce the allowable square footage of childcare use from 13,240 square feet to 10,000  
25 square feet.

1 At the Schlage Lock site, this company operated a large industrial plant for the better  
 2 part of a century, providing jobs for area residents and serving as a key part of the community.  
 3 Ingersoll Rand, the parent company of Schlage Lock, closed the plant in 1999, indicating a  
 4 wish to sell the property. Since that time, the site has remained vacant and under-utilized.

5 In 2002, the City sponsored a series of community planning workshops to formulate a  
 6 community plan for the re-use of the 20-acre site. The community planning workshops,  
 7 involving several hundred residents of Visitacion Valley and surrounding neighborhoods,  
 8 produced a written report, "The Visitacion Valley Schlage Lock Community Planning  
 9 Workshop: Strategic Concept Plan and Workshop Summary." This plan calls for a mix of  
 10 housing, open space, community-oriented retail and community-oriented institutional uses.  
 11 The plan contemplates 740 new units of housing on the residential portions of the site. Using  
 12 a planning standard of 1,000 square feet per unit, the projected square footage of new  
 13 residential development at the site is 740,000 square feet.

14 Projected New Visitacion Valley  
 15 Residential Development

17 Signature Properties 18 (Executive Park)	433 units	615,000 square feet
19		
20 Top Vision 21 (Executive Park)	410 units	618,000 square feet
22		
23 Yerby 24 (Executive Park)	496 units	476,000 square feet
25		

Schlage Lock	740 units	740,000 square feet
Total	2,079 units	2,449,000 square feet

In its environmental review of the Signature Properties application, the San Francisco Planning Department estimates 3,340 new residents at the three Executive Park sites. For the Schlage Lock site, a planning standard of 2.2 new residents per unit is applied to the development, or 1,628 new residents. Together, therefore, these four proposals are expected to introduce 4,968 new residents to the neighborhood.

According to the 2000 Census, there are currently 16,482 residents in Visitacion Valley. With the 4,968 new residents expected through the above projects, the new Visitacion Valley population would be 21,450 residents. Therefore, 23.2% of all Visitacion Valley residents would be new residents at these four project sites.

B. ~~(b)~~ San Francisco's growing population and severe housing crisis requires the development of new housing. To respond to this need for housing, the City is considering granting Conditional Use Authorization, re-zonings, and/or General Plan Amendments for a number of large development sites in Visitacion Valley. These areas are currently occupied primarily by office or industrial uses with minimal community facilities and infrastructure to support a significant residential population. In addition, very few residents currently reside in these areas. New residential development in these areas will impact Visitacion Valley's community facilities and infrastructure and will generate a substantial need for community improvements as the neighborhood's population grows as a result of new residential

1 development. Substantial new investments in community infrastructure, including active  
2 recreational spaces, community facilities, and other public services are necessary to mitigate  
3 the impacts of new development at these sites.

4 The amendments to the General Plan, Planning Code and/or Zoning Maps that are  
5 necessary to facilitate residential developments at these sites will permit a substantial amount  
6 of new residents. More than 2,050 new units representing approximately 5,000 new residents  
7 would be anticipated in the Visitacion Valley neighborhood, resulting in a 30% increase in the  
8 neighborhood's residential population. The new development will have a profound impact on  
9 the neighborhood's dated infrastructure. A comprehensive program of community facilities  
10 and public infrastructure is necessary to mitigate the impacts of the proposed new  
11 development and to provide these basic community improvements to the neighborhood's  
12 growing residential population.

13 As a result of this new development, property tax revenue is projected to increase.  
14 These revenues will fund improvements and expansions to general City services, including  
15 Police, Fire, Emergency, and other services needed to partially meet the increased demand  
16 associated with new development. Local impacts on the need for community facilities and  
17 infrastructure will be heightened in Visitacion Valley, compared to those typically funded by  
18 City government through property tax revenues. The relative cost of capital improvements,  
19 along with the reduced role of State and federal funding sources, increases the necessity for  
20 development impact fees to cover these costs. General property tax revenues will not be  
21 adequate to fully fund the costs of the community facilities and infrastructure necessary to  
22 mitigate the impacts of new development in the Visitacion Valley neighborhood.

23 Development impact fees are a more cost-effective, realistic way to implement  
24 mitigations to a local neighborhood associated with particular developments' impacts. As  
25 important, the proposed Visitacion Valley Community Facilities and Infrastructure Fee would

1 be dedicated to the Visitacion Valley area, directing benefits of the fund directly to those who  
2 pay into the fund.

3 While this fee will increase the overall burden on new development in the  
4 neighborhood, the burden is typically reflected in a reduced sale price for developable land, or  
5 passed on to the buyers/renters of housing in the neighborhood and thus is borne primarily by  
6 those who have caused the impact and who will ultimately enjoy the benefits of the community  
7 improvements it pays for.

8 The purpose of the Visitacion Valley Community Facilities and Infrastructure Fee is to  
9 provide specific improvements, including active recreational spaces, pedestrian and  
10 streetscape improvements, and other facilities and services. The Visitacion Valley Community  
11 Facilities and Infrastructure Fee will create the necessary financial mechanism to fund these  
12 improvements in proportion to the need generated by new development.

13 The capital improvements that the fee would fund are clearly described in the  
14 ordinance. The fee would be solely used to fund the acquisition, design, and construction of  
15 community facilities in the Visitacion Valley neighborhood. The proposed fees only cover  
16 impacts caused by new development and are not intended to remedy already existing  
17 deficiencies; those costs will be paid for by other sources.

18 The City has existing plans for the community facility and infrastructure projects to be  
19 funded through this fee. The San Francisco Public Library has an account established, initial  
20 funds appropriated, and adopted plans and a preliminary construction schedule for the  
21 Visitacion Valley Branch Library. The San Francisco Department of Recreation and Parks has  
22 accounts established, initial funds appropriated, and adopted plans and a preliminary  
23 construction schedule for the Visitacion Valley projects identified herein. The Department of  
24 Public Works, in coordination with the Planning Department, has an account established and  
25 adopted plans and a preliminary construction schedule for the Leland Avenue street

1 improvements. It is anticipated that the remaining community facility and infrastructure  
2 projects would be at a similar stage of development in terms of having accounts established  
3 and plans adopted as the projects listed above when the final developments covered by this  
4 ordinance are to apply for City permits.

5 C. (e) In order to enable the City and County of San Francisco to create a unified,  
6 attractive, and safe residential Visitacion Valley neighborhood, and to mitigate the impacts of  
7 potential new large developments on community amenities, it is necessary to upgrade existing  
8 streets and streetscaping and to develop neighborhood public services, active recreational  
9 spaces, and community facilities. To fund such community infrastructure and amenities, new  
10 residential development in the neighborhood shall be assessed development impact fees  
11 proportionate to the increased demand or such infrastructure and amenities created by the  
12 new housing. The City will use the proceeds of the fee to develop community facilities and  
13 infrastructure within Visitacion Valley that provides direct benefits to the new housing.

14 The development of community facilities and infrastructure in the Visitacion Valley  
15 neighborhood will provide a benefit to new residents beyond the provision of services. It is  
16 anticipated that new residents will realize an increase in property values due to the enhanced  
17 neighborhood amenities financed with the proceeds of the fee. A Visitacion Valley Community  
18 Facilities and Infrastructure Fee shall be established for new residential development within  
19 Visitacion Valley as set forth herein.

20 The proposed improvements described below are necessary to serve the new  
21 population at the anticipated densities. Cost estimates are based on an assessment of the  
22 potential cost to the City of providing the specific improvements. Developer contributions are  
23 based upon the percentage of new residents expected in Visitacion Valley at these four  
24 project sites, or 23.2%, with the exception of improvements necessary to mitigate impacts that  
25



1 are created entirely by the developers. In these cases, developer contributions are set at  
2 100%.

3 The proposed Visitacion Valley Community Facilities and Infrastructure Fee would fund  
4 mitigations of the impacts of new development on:

- 5 • Active Recreational Spaces: development of neighborhood playground, pool, and  
6 outdoor education center
- 7 • Library Facilities: construction of a new neighborhood library
- 8 • Community Facilities: development of community spaces available for public uses
- 9 • Streetscape Improvements: Blanken Avenue sidewalk widening and lighting  
10 improvements; Leland Avenue streetscape improvements

11 Active Recreational Space: The San Francisco Recreation and Park Department has  
12 provided a cost estimate of necessary improvements to the Kelloch-Velasco Playground  
13 (\$2,222,500), the Coffman Pool (\$10,600,000), and the Visitacion Valley Greenway-  
14 Educational Center for the Sciences and Arts at Tioga Avenue (\$2,054,000). The total  
15 developer contribution is deemed to be \$3,451,348.

16 Library Facilities: The San Francisco Public Library has provided a cost estimate for the  
17 construction of the Visitacion Valley Branch Library (\$9,350,000). The total developer  
18 contribution is deemed to be \$2,169,200.

19 Community Facilities: In the Rincon Hill Plan adopted by the Board of Supervisors, the  
20 San Francisco Planning Department determined a need of community facilities space at 2.29  
21 square feet for every new resident. Based upon the 4,968 new residents projected for  
22 Visitacion Valley from residential development in large opportunity sites, there would be a  
23 need for 11,376 square feet of new community center space.

24 For a comparable land cost, the San Francisco Public Library acquired its current  
25 development site on Leland Avenue for \$135 per square foot. For comparable improvement

1 costs, the San Francisco Planning Department estimated a cost of \$400 per square foot to  
2 build a new community center in Rincon Hill. Taken together, the cost to build a new  
3 community center in Visitacion Valley for the new residents is estimated to be \$6,086,160, a  
4 cost to be entirely borne by the developers.

5 Streetscape Improvements: DPW ~~The San Francisco Department of Public Works~~ and San  
6 Francisco Public Utilities Commission estimate the cost to upgrade the Blanken Avenue  
7 tunnel to make it more accessible for pedestrians, to be \$152,755. This estimate includes  
8 widening the sidewalk and improving the lighting in the tunnel. Because these improvements  
9 are necessary to accommodate new pedestrian traffic--and to minimize automobile use--in the  
10 new developments, this cost is to be entirely borne by the developers.

11 DPW ~~The San Francisco Department of Public Works~~ and the ~~San Francisco~~ Planning  
12 Department have provided a cost estimate for improvements to Leland Avenue, the  
13 commercial core of Visitacion Valley (\$2,621,730). The total developer contribution is deemed  
14 to be \$608,241.

15 Total Developer Contribution: The total developer contribution for Visitacion Valley  
16 community facilities and infrastructure improvements is \$12,467,704. At an estimated  
17 2,449,000 square feet of new residential development, the developer contribution is \$5.09 per  
18 square foot. The Visitacion Valley Community Facilities and Infrastructure Fee shall be  
19 established at \$4.58 per square foot, or 90% of the estimated costs of the community  
20 improvements. By charging developers less than the maximum amount of the justified impact  
21 fee, the City avoids any need to refund money to developers if fees collected exceed costs.

22 D. (d) The Board of Supervisors finds that the Fees imposed in Section 420.1 et seq. ~~this~~  
23 ~~ordinance~~ as impact fees to fund specific improvements, including active recreational spaces,  
24 pedestrian and streetscape improvements, and other facilities and services, are proportionate  
25 to the need generated by residential development projects in Visitacion Valley. It shall be the

1 policy of the Board of Supervisors that no additional development impact fees specific to  
2 Visitacion Valley will be imposed to fund the specific improvements described above. It is the  
3 policy of the Board of Supervisors that any future changes to citywide impact fees or other  
4 exactions will apply equally to Visitacion Valley as to other areas of the City, unless otherwise  
5 excepted by the Board.

6 SEC. ~~420.2~~ ~~318.12~~. DEFINITIONS. See Section 401 of this Article. ~~the following definitions~~  
7 ~~shall govern this ordinance:~~

8 ~~(a) "Community facilities" shall mean all uses as defined under Section 209.4(a) of this Code.~~

9 ~~(b) "Net addition of occupiable square feet of residential use" shall mean occupied floor area,~~  
10 ~~as defined in Section 102.10 of this Code, including bathrooms provided as part of dwelling units, to be~~  
11 ~~occupied by or primarily serving, residential use excluding common areas such as hallways, fitness~~  
12 ~~centers and lobbies, less the occupied floor area in any structure demolished or rehabilitated as part of~~  
13 ~~the proposed residential development project which occupied floor area was used primarily and~~  
14 ~~continuously for residential use and was not accessory to any use other than residential use for at least~~  
15 ~~five years prior to Planning Department approval of the residential development project subject to this~~  
16 ~~Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

17 ~~(c) "Residential development project" shall mean any new construction, addition, extension,~~  
18 ~~conversion or enlargement, or combination thereof, of an existing structure which includes any~~  
19 ~~occupied floor area of residential use and which has twenty (20) residential units or more; provided,~~  
20 ~~however, that for projects that solely comprise an addition to an existing structure which would add~~  
21 ~~occupied floor area in an amount less than 20 percent of the occupied floor area of the existing~~  
22 ~~structure, the provisions of this Section shall only apply to the new occupied square footage.~~

23 ~~(d) "Residential use" shall mean any structure or portion thereof intended for occupancy by~~  
24 ~~uses as defined in Section 890.88 of this Code and shall not include any use which qualifies as an~~  
25 ~~accessory use, as defined and regulated in Sections 204 through 204.5.~~

1           ~~(e) "Sponsor" shall mean an applicant seeking approval for construction of a residential~~  
2 ~~development project subject to this Section and such applicant's successors and assigns.~~

3           ~~(f) "Townhome" shall mean a dwelling unit that: (i) either is a freestanding building, or shares~~  
4 ~~only walls with other dwelling units; and (ii) has an entrance directly on a sidewalk used by members~~  
5 ~~of the public or residents of the residential development project. "Townhome" shall not mean a~~  
6 ~~dwelling unit of any type located on a podium over garage, community facility, commercial or other~~  
7 ~~space.~~

8           ~~(g) "Visitacion Valley" shall mean the area bounded by Carter Street and McLaren Park to the~~  
9 ~~west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard to the~~  
10 ~~northeast, Bayview Park to the north, Candlestick Park and Candlestick Point Recreation Area to the~~  
11 ~~east, the San Francisco Bay to the southeast, and the San Francisco County line to the south.~~

12           SEC. ~~420.3 318.13~~. APPLICATION; ~~IMPOSITION OF REQUIREMENT~~.

13           (a) *General Application:* Section 420.1 et seq. ~~This ordinance~~ shall apply to all  
14 residential development projects that:

15           (1) are located in Visitacion Valley; and

16           (2) have both not filed an application or a building permit, site permit, conditional  
17 use, planned unit development, environmental evaluation, ~~z~~Zoning ~~m~~Map amendment or  
18 ~~g~~General ~~p~~Plan amendment prior to September 1, 2003, and have filed an application for a  
19 building permit, site permit, conditional use, planned unit development, environmental  
20 evaluation, ~~z~~Zoning ~~m~~Map amendment or ~~g~~General ~~p~~Plan amendment on or after September  
21 1. 2003.

22           ~~(b) — Application to Townhomes: Prior to the issuance by DBI of the first building permit for~~  
23 ~~a Townhome that is part of a residential development project, the Sponsor shall pay to the Treasurer~~  
24 ~~half of the Visitacion Valley Community Facilities and Infrastructure Fee ("Fee") of \$4.58 for each net~~  
25 ~~addition of occupiable square feet of residential use within the Townhome for which the building permit~~

1 *is sought. The Sponsor shall pay to the Treasurer the other half of the Fee prior to the issuance by DBI*  
2 *of the first certificate of occupancy for such Townhome.*

3 *(c) — Application to Other Residential Development Projects: Prior to the issuance by DBI of*  
4 *the first certificate of occupancy for any building other than a Townhome that is part of a residential*  
5 *development project, the Sponsor shall pay to the Treasurer the entire Fee of \$4.58 for each net*  
6 *addition of occupiable square feet of residential use within the building for which the certificate of*  
7 *occupancy is sought.*

8 *(b) Amount of Fee. The Visitacion Valley Community Facilities and Infrastructure Fee*  
9 *("Fee") shall be \$4.58 for each net addition of occupiable square feet of residential use within a*  
10 *development project subject to this Section.*

11 *(c) (d) Credits for In-Kind Improvements:*

12 (1) Credit for On-Site Community Facilities: In its review of a proposed residential  
13 development project subject to Section 420.1 et seq. this ordinance, the Planning Commission  
14 and Board of Supervisors shall apply the planning standard of 2.29 square feet of community  
15 facilities space for each new resident projected at the residential development project to  
16 calculate the residential development project's allocation of community facilities space. The  
17 project Ssponsor shall receive a credit against the Fee of \$535 per square foot of community  
18 facilities space provided on-site within the boundaries of the residential development project,  
19 provided that such credit shall not exceed \$2.24 multiplied by the net addition of occupiable  
20 square feet of residential use in the residential development project. To qualify for a credit, the  
21 community facilities shall be open and available to the general public on the same terms and  
22 conditions as to residents of the residential development project in which the community  
23 facilities are located.

24 (2) Credit for Improvements to Blanken Avenue: The ~~Planning~~ Commission may  
25 reduce the Fee described in this Section for specific residential development proposals in

1 cases where the Sponsor has entered into an agreement with the City, in form acceptable to  
2 the City Attorneys' Office, to provide in-kind improvements to Blanken Avenue. For the  
3 purposes of calculating the total value of the in-kind community improvements, the project  
4 Sponsor shall provide the *Planning* Department with a cost estimate for the proposed in-kind  
5 improvements from two independent contractors. Based on these estimates, the Director of  
6 Planning shall determine their appropriate value and the *Planning* Commission may reduce  
7 the Fee assessed to that project proportionally. The *Planning* Commission may not reduce the  
8 fee by an amount greater than the amount that would be the Sponsor's contribution toward  
9 the Blanken Avenue improvements if the Sponsor were to pay the Fee.

10 (d) Timing and Payment of Fee. Any fee required by Section 420.1 et seq. shall be paid to  
11 the Development Fee Collection Unit at DBI prior to issuance of the first construction document, with  
12 an option for the project sponsor to defer payment to prior to issuance of the first certificate of  
13 occupancy upon agreeing to pay a deferral surcharge that would be deposited into the Visitacion  
14 Valley Community Facilities and Infrastructure Fund in accordance with Section 402 of this Article  
15 and Section 107A.13 of the San Francisco Building Code.

16 SEC. 420.4. IMPOSITION OF REQUIREMENTS.

17 (a) Determination of Requirements. The Department shall determine the applicability of  
18 Section 420.1 et seq. to any development project requiring a building or site permit and, if Section  
19 420.1 et seq. is applicable, the net addition of occupiable square feet of residential use subject to its  
20 requirements, and shall impose the fee requirements as a condition of approval for issuance of the  
21 building or site permit. The project sponsor shall supply any information necessary to assist the  
22 Department in this determination.

23 (b) Notice to Development Fee Collection Unit of Requirements. Prior to issuance of the  
24 building or site permit for a development project subject to Section 420 et seq., the Department shall  
25 notify the Development Fee Collection Unit at DBI of its final determination of any fee requirements,

1 including any fee credits for in-kind improvements, in addition to the other information required by  
2 Section 402(b) of this Article.

3 (c) Development Fee Collection Unit Notice to Department. The Development Fee  
4 Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to  
5 issuing the first certificate of occupancy for any development project subject to Section 420.1 et seq.  
6 that has elected to satisfy its fee requirement with credits-in-kind improvements. If the Department  
7 notifies the Unit at such time that the sponsor has not satisfied the in-kind improvements requirements  
8 of Section 420.3, the Director of DBI shall deny any and all certificates of occupancy until the subject  
9 project is brought into compliance.

10 (d) Process for Revisions of Determination of Requirements. In the event that the  
11 Department or the Commission takes action affecting any development project subject to Section 420.1  
12 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department  
13 or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of  
14 Section 402(c) of this Article shall be followed.

15 (e) Treasure's Certification: Upon payment of the Fee to the Treasurer as required under  
16 this Section and upon request of the Sponsor, the Treasurer shall issue a certification that the Fee has  
17 been half or fully paid, as the case may be. The Sponsor shall present such certification to the Planning  
18 Department and DBI prior to the issuance by DBI of (i) the first site permit for each Townhome that is  
19 part of a residential development project, and (ii) the first certificate of occupancy for each building  
20 that is part of a residential development project, as the case may be. DBI shall not issue such building  
21 permit or first certificate of occupancy without the Treasurer's certification as described above. Any  
22 failure of the Treasurer, DBI, or the Planning Department to give any notice under this Section shall  
23 not relieve a Sponsor from compliance with this Section. Where DBI inadvertently issues a building  
24 permit or a first certificate of occupancy without payment of the Fee or portion thereof as required by  
25 this Section, DBI shall not issue any further certificates of occupancy for the residential development

1 ~~project without notification from the Treasurer that the Fee or portion thereof as required by this~~  
2 ~~Section has been paid. The procedure set forth in this Subsection is not intended to preclude~~  
3 ~~enforcement of the provisions of this Section under any other section of this Code, or other authority~~  
4 ~~under the laws of the State of California.~~

5 (f) — ~~Waiver or Reduction:~~

6 (1) — ~~A project applicant of any project subject to the requirements in this Section may appeal~~  
7 ~~to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the~~  
8 ~~absence of any reasonable relationship or nexus between the impact of development and the amount of~~  
9 ~~the fee charged.~~

10 (2) — ~~A project applicant subject to the requirements of this Section who has received an~~  
11 ~~approved building permit, conditional use permit or similar discretionary approval and who submits a~~  
12 ~~new or revised building permit, conditional use permit or similar discretionary approval for the same~~  
13 ~~property may appeal for a reduction, adjustment or waiver of the requirements with respect to the~~  
14 ~~square footage of construction previously approved.~~

15 (3) — ~~Any such appeal shall be made in writing and filed with the Clerk of the Board no later~~  
16 ~~than 15 days after the date the Sponsor is required to pay to the Treasurer the fee as required in this~~  
17 ~~Section. The appeal shall set forth in detail the factual and legal basis for the claim of waiver,~~  
18 ~~reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60~~  
19 ~~days after the filing of the appeal. The appellant shall bear the burden of presenting substantial~~  
20 ~~evidence to support the appeal, including comparable technical information to support appellant's~~  
21 ~~position. The decision of the Board shall be by a simple majority vote and shall be final. If a reduction,~~  
22 ~~adjustment, or waiver is granted any change in use within the project shall invalidate the waiver,~~  
23 ~~adjustment, or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of~~  
24 ~~the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the~~  
25 ~~Treasurer.~~



1           SEC. ~~420.4~~ ~~318.14~~. LIEN PROCEEDINGS. If, for any reason, the fee imposed under Section  
2 420.3 remains unpaid following issuance of the certificate of occupancy, the Development Fee  
3 Collection Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee,  
4 plus interest and any deferral surcharge, a lien against all parcels used for the development project in  
5 accordance with Section 408 of this Article and Section 107A.13.215 of the San Francisco Building  
6 Code.

7           ~~(a) — A Sponsor's failure to comply with the requirements of Section 319.3, shall constitute~~  
8 ~~cause for the City to record a lien against the housing development project in the sum of the Fee~~  
9 ~~required under Section 319.3. If, for any reason, (i) more than 50% of the Fee remains unpaid~~  
10 ~~following issuance of the first site or building permit for a Townhome that is part of a residential~~  
11 ~~development project, or (ii) any portion of the Fee remains unpaid following issuance of the first~~  
12 ~~certificate of occupancy for any building that is part of a residential development project, any amount~~  
13 ~~then due shall accrue interest at the rate of one and one-half percent per month, or fraction thereof,~~  
14 ~~from the date of issuance of the permit or certificate as the case may be, until the date of final payment~~  
15 ~~in the unpaid but due amount.~~

16           ~~(b) — If for any reason, the Fee or portion thereof imposed pursuant to this ordinance remains~~  
17 ~~unpaid following issuance of the permit or certificate of occupancy as applicable, the Treasurer shall~~  
18 ~~initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative~~  
19 ~~Code to make the entire unpaid balance of the Fee, including interest, a lien against all parcels used~~  
20 ~~for the residential development project and shall send all notices required by that Article to the owner~~  
21 ~~of the property as well as the Sponsor. The Treasurer shall also prepare a preliminary report notifying~~  
22 ~~the Sponsor of a hearing to confirm such report by the Board of Supervisors at least 10 days before the~~  
23 ~~date of the hearing. The report to the Sponsor shall contain the Sponsor's name, a description of the~~  
24 ~~Sponsor's housing development project, a description of the parcels of real property to be encumbered~~  
25 ~~as set forth in the Assessor's Map Books for the current year, a description of the alleged violation of~~

1 *this ordinance, and shall fix a time, date, and place for hearing. The Treasurer shall cause this report*  
2 *to be mailed to the Sponsor and each owner of record of the parcels of real property subject to lien.*  
3 *Except for the release of lien recording fee authorized by Administrative Code Section 10.237, all sums*  
4 *collected by the Tax Collector pursuant to this ordinance shall be held in trust by the Treasurer and*  
5 *deposited in the Fund established in Section 319.6.*

6 (c) — *Any notice required to be given to a Sponsor or owner shall be sufficiently given or*  
7 *served upon the Sponsor or owner for all purposes hereunder if personally served upon the Sponsor or*  
8 *owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the Sponsor*  
9 *or owner at the official address of the Sponsor or owner maintained by the Tax Collector for the*  
10 *mailing of tax bills or, if no such address is available, to the Sponsor at the address of the residential*  
11 *development project, and to the applicant for the building permit or certificate of occupancy, as the*  
12 *case may be, at the address on the permit application.*

13 ~~SEC. 318.15. FEE REFUND WHEN BUILDING PERMIT EXPIRES PRIOR TO~~  
14 ~~COMPLETION OF WORK AND COMMENCEMENT OF OCCUPANCY.~~

15 *In the event a building permit expires prior to completion of the work on and commencement of*  
16 *occupancy of a residential development project so that it will be necessary to obtain a new permit to*  
17 *carry out any development, the obligation to comply with this ordinance shall be cancelled, and any*  
18 *Fee previously paid to the Treasurer shall be refunded. If and when the Sponsor applies for a new*  
19 *building permit, the procedures set forth in this ordinance regarding payment of the Fee shall be*  
20 *followed.*

21 SEC. ~~420.5~~ 318.16. VISITACION VALLEY COMMUNITY FACILITIES AND  
22 INFRASTRUCTURE FUND.

23 (a) There is hereby established a separate fund set aside for a special purpose  
24 entitled the Visitacion Valley Community Facilities and Infrastructure Fund ("Fund"). All  
25

1 monies collected by ~~DBI the Treasurer~~ pursuant to Section ~~420.3(b)~~ ~~319.3(b)~~ shall be deposited  
2 in the Fund which shall be maintained by the Controller.

3 (b) The receipts in the Fund are, subject to the budgetary and fiscal provisions of  
4 the Charter, to be used solely to fund community facilities and infrastructure in Visitacion  
5 Valley, including but not limited to capital improvements to library facilities, playgrounds,  
6 recreational facilities, and major streets.

7 (c) No portion of the Fund may be used, by way of loan or otherwise, to pay any  
8 administrative, general overhead, or similar expense of any public entity.

9 (d) The Controller shall not release any monies from the Fund without prior approval  
10 of the Board of Supervisors for an expenditure. City Agencies responsible for the construction  
11 or improvement of public infrastructure subject to this ordinance, including but not limited to  
12 the San Francisco Public Library, DPW ~~the Department of Public Works~~, and the Department of  
13 Recreation and Parks, shall request funds from the Board of Supervisors as necessary.  
14 Before approving any expenditures, the Board of Supervisors shall determine the relative  
15 impact from the residential development on public infrastructure in Visitacion Valley described  
16 in ~~Section 420.56(b)~~ ~~319.6(b)~~ and shall insure that the expenditures are consistent with  
17 mitigating the impacts from the development.

18 (e) The Controller's Office shall file an annual report with the Board of Supervisors  
19 beginning one year after the effective date of ~~Section 418.1 et seq. this ordinance~~, which report  
20 shall set forth the amount of money collected in the Fund.

21 ~~SEC. 318.17. PARTIAL INVALIDITY AND SEVERABILITY.~~

22 ~~If any provision of this ordinance, or its application to any residential development project is~~  
23 ~~held invalid, the remainder of the ordinance, or the application of such provision to other residential~~  
24 ~~development projects shall not be affected thereby.~~

1           SEC. 421 (formerly Section 326). MARKET AND OCTAVIA COMMUNITY  
2 IMPROVEMENTS FUND.

3           Section~~s~~ 421.1 326.1 to through 421.7 326.8, hereafter referred to as Section 421.1 et seq., set  
4 forth the requirements and procedures for the Market and Octavia Community Improvements  
5 Fund. The effective date of these requirements shall be either April 3, 2008, the date that the  
6 requirements originally became effective, or the date a subsequent modification, if any, became  
7 effective.

8           SEC. 421.1 326.1. FINDINGS.

9           A.     Market and Octavia Plan Objectives. The Market and Octavia Area Plan  
10 embodies the community's vision of a better neighborhood, which achieves multiple objectives  
11 including creating a healthy, vibrant transit-oriented neighborhood. The Planning Department  
12 coordinated development of the Area Plan objectives around the tenants of the Better  
13 Neighborhood Planning process and within the larger framework of the General Plan.

14           The Market and Octavia Plan Area encompasses a variety of districts, most of which  
15 are primarily residential or neighborhood commercial. The Area Plan calls for a maintenance  
16 of the well-established neighborhood character in these districts with a shift to a more transit-  
17 oriented type of districts. A transit-oriented district, be it neighborhood commercial or  
18 residential in character, generates a unique type of infrastructure needs.

19           The overall objective of the Market and Octavia planning effort is to encourage  
20 balanced growth in a centrally located section of the City that is ideal for transit oriented  
21 development. The Area Plan calls for an increase in housing and retail capacity simultaneous  
22 to infrastructure improvements in an effort to maintain and strengthen neighborhood  
23 character.

24           B.     Need for New Housing and Retail. New residential construction in San Francisco  
25 is necessary to accommodate a growing population. The population of California has grown

1 by more than 11 percent since 1990 and is expected to continue increasing. The San  
2 Francisco Bay Area is growing at a rate similar to the rest of the state.

3 The City should encourage new housing production in a manner that enhances existing  
4 neighborhoods and creates new high-density residential and mixed-use neighborhoods. One  
5 solution to the housing crisis is to encourage the construction of higher density housing in  
6 areas of the City best able to accommodate such housing. Areas like the Plan Area can better  
7 accommodate growth because of easy access to public transit, proximity to downtown,  
8 convenience of neighborhood shops to meet daily needs, and the availability of development  
9 opportunity sites. San Francisco's land constraints, as described in Section ~~418.1(A)~~ ~~318.1(A)~~,  
10 limit new housing construction to areas of the City not previously designated as residential  
11 areas, infill sites, or areas that can absorb increased density.

12 The Market and Octavia Plan Area presents opportunity for infill development on  
13 various sites, including parcels along Octavia Boulevard known as "the Central Freeway  
14 parcels," some parcels along Market Street, and the SoMa West portions of the Plan Area.  
15 These sites are compelling opportunities because new housing can be built within easy  
16 walking distance of the downtown and Civic Center employment centers and City and regional  
17 transit centers, while maintaining the comfortable residential character and reinforcing the  
18 unique and exciting neighborhood qualities.

19 To respond to the identified need for housing, repair the fabric of the neighborhood,  
20 and support transit-oriented development, the Market and Octavia Plan Area is zoned for the  
21 appropriate residential and commercial uses. The Planning Department is adding a Van Ness  
22 Market Downtown Residential Special Use District (VNMDR-SUD) in the Plan Area and  
23 establishing a Residential Transit-oriented (RTO) district and several Neighborhood  
24 Commercial Transit (NCT) districts. New zoning controls encourage housing and commercial  
25 development appropriate to each district.

1 The plan builds on existing neighborhood character and establishes new standards for  
2 amenities necessary for a transit-oriented neighborhood. A transit-oriented neighborhood  
3 requires a full range of neighborhood serving businesses. New retail and office space will  
4 provide both neighborhood- and City-serving businesses.

5 San Francisco is experiencing a severe shortage of housing available to people at all  
6 income levels, especially to those with the lowest incomes while seeing a sharp increase in  
7 housing prices. The Association of Bay Area Governments' (ABAG) Regional Housing Needs  
8 Determination (RHND) forecasts that San Francisco must produce 2,716 new units of housing  
9 annually to meet projected needs. At least 5,639 of these new units should be available to  
10 moderate income households. New affordable units are funded through a variety of sources,  
11 including inclusionary housing and in lieu fees leveraged by new market rate residential  
12 development pursuant to Sections ~~413 313~~ and ~~415 315~~. The Planning Department projects  
13 that approximately 1,400 new units of affordable housing will be developed as a result of the  
14 plan. New Development Requires new Community Infrastructure.

15 The purpose for new development in the Plan Area is established above (Section  
16 ~~421.1(A) 326.1(a)~~). New construction should not diminish the City's open space, jeopardize the  
17 City's Transit First Policy, or place undue burden on the City's service systems. The new  
18 residential and ~~commercial~~ non-residential construction should preserve the existing  
19 neighborhood services and character, as well as increase the level of service for all modes  
20 necessary to support transit-oriented development. New development in the area will create  
21 additional impact on the local infrastructure, thus generating a substantial need for community  
22 improvements as the district's population and workforce grows.

23 The amendments to the General Plan, Planning Code, and Zoning Maps that  
24 correspond to Section 421.1 et seq. ~~this ordinance~~ will permit an increased amount of new  
25 residential and commercial development. The Planning Department anticipates an increase of

1 5,960 units within the next 20 years, and an increase of 9,875 residents, as published in the  
2 environmental impact report. This new development will have an extraordinary impact on the  
3 Plan Area's infrastructure. As described more fully in the Market and Octavia Plan Final  
4 Environmental Impact Report, *San Francisco Planning Department, Case No. \_\_\_\_\_* on file  
5 with the Clerk of the Board in File No. 071157, and the Market and Octavia Community  
6 Improvements Program Document, San Francisco Planning Department, *Case No. \_\_\_\_\_*  
7 on file with the Clerk of the Board in File No. 071157, new development will generate  
8 substantial new pedestrian, vehicle, bicycle, and transit trips which will impact the area. The  
9 transition to a new type of district is tantamount to the development of new subdivisions, or  
10 the transition of a district type, in terms of the need for new infrastructure.

11 The Market and Octavia Area Plan proposes to mitigate these impacts by providing  
12 extensive pedestrian, transit, traffic-calming and other streetscape improvements that will  
13 encourage residents to make as many daily trips as possible on foot, by bicycle or on transit;  
14 by creating new open space, greening, and recreational facilities that will provide necessary  
15 public spaces; and by establishing a range of other services and programming that will meet  
16 the needs of community members. A comprehensive program of new public infrastructure is  
17 necessary to lessen the impacts of the proposed new development and to provide the basic  
18 community improvements to the area's new community members. The Market and Octavia  
19 Community Improvements Program Document provides a more detailed description of  
20 proposed Community Improvements.

21 In order to enable ~~the City and County of~~ San Francisco to provide necessary public  
22 services to new residents; to maintain and improve the Market and Octavia Plan Area  
23 character; and to increase neighborhood livability and investment in the district, it is necessary  
24 to upgrade existing streets and streetscaping; acquire and develop neighborhood parks,  
25 recreation facilities and other community facilities to serve the new residents and workers.

1 While the open space requirements imposed on individual developments address  
2 minimum needs for private open space and access to light and air, such open space does not  
3 provide the necessary public social and recreational opportunities as attractive public facilities  
4 such as sidewalks, parks and other community facilities that are essential urban infrastructure,  
5 nor does it contribute to the overall transformation of the district into a safe and enjoyable  
6 transit-oriented neighborhood.

7 C. Program Scope. The purpose of the proposed Market and Octavia Community  
8 *Improvements Infrastructure* Impact Fees is to provide specific public improvements, including  
9 community open spaces, pedestrian and streetscape improvements and other facilities and  
10 services. These improvements are described in the Market and Octavia Area Plan and  
11 Neighborhood Plan and the accompanying ordinances, and are necessary to meet  
12 established City standards for the provision of such facilities. The Market and Octavia  
13 Community Improvements Fund and Community *Improvements Infrastructure* Impact Fee will  
14 create the necessary financial mechanism to fund these improvements in proportion to the  
15 need generated by new development.

16 National and international transportation studies (such as the Dutch Pedestrian Safety  
17 Research Review. T. Hummel, SWOV Institute for Road Safety Research (Holland), and  
18 University of North Carolina Highway Safety Research Center for the U.S. Department of  
19 Transportation, 1999 on file with the Clerk of the Board *in File No.* \_\_\_\_\_) have  
20 demonstrated that pedestrian, traffic-calming and streetscape improvements of the type  
21 proposed for the Market and Octavia Plan Area result in safer, more attractive pedestrian  
22 conditions. These types of improvements are essential to making pedestrian activity a viable  
23 choice, thereby helping to mitigate traffic impacts associated with excess automobile trips that  
24 could otherwise be generated by new development.



1 The proposed Market and Octavia Community Infrastructure Impact Fee is necessary  
2 to maintain progress towards relevant state and national service standards, as well as local  
3 standards in the Goals and Objectives of the General Plan for open space and streetscape  
4 improvements as discussed in ~~Planning Code s~~Section ~~418.1(F)~~ ~~318.1(F)~~. Additionally the fee  
5 contributes to library resources and childcare facilities standards discussed below:

6 Library Resources: New residents in Plan Area will generate a substantial new need for  
7 library services. The San Francisco Public Library does not anticipate adequate demand for a  
8 new branch library in the Market and Octavia Plan Area at this time. However, the increase in  
9 population in Plan Area will create additional demand at other libraries, primarily the Main  
10 Library and the Eureka Valley Branch Library. The Market and Octavia Community  
11 Infrastructure Impact Fee includes funding for library services equal to \$69.00 per new  
12 resident, which is consistent with the service standards used by the San Francisco Public  
13 Library for allocating resources to neighborhood branch libraries. Child Care Facilities: New  
14 households in the Plan Area will generate a need for additional childcare facilities. Childcare  
15 services are integral to the financial and social success of families. Nationwide, research and  
16 policies are strengthening the link between childcare and residential growth, many Bay Area  
17 counties are leading in efforts to finance new childcare through new development. San Mateo  
18 has conducted detailed research linking housing to childcare needs. Santa Clara County has  
19 developed exemplary projects that provide childcare facilities in proximity to transit stations,  
20 and Santa Cruz has levied a fee on residential development to fund childcare. Similarly many  
21 research efforts have illustrated that adequate childcare services are crucial in supporting a  
22 healthy local economy, see research conducted by Louise Stoney, Mildred Warner, PPIC,  
23 County of San Mateo, CA on file with the Clerk of the Board *in File No.* \_\_\_\_\_.  
24 MOCD's Project Connect Report identified childcare as an important community service in  
25 neighboring communities. Project connect did not survey the entire Market and Octavia Plan

1 Area, it focused on low income communities, including Market and Octavia's neighbors in the  
2 Mission, Western Addition, and the Tenderloin. The Department of Children Youth and Their  
3 Families projects new residents of Market and Octavia will generate demand for an additional  
4 435 childcare spaces, of those 287 will be serviced through new child care development  
5 centers.

6 D. Programmed Improvements and Costs. Community improvements to mitigate  
7 the impact of new development in the Market and Octavia Plan Area were identified through a  
8 community planning process, based on proposals in the Market and Octavia Area Plan on file  
9 with the Clerk of the Board in File No.071158, and on a standards based analysis, and on  
10 community input during the Plan adoption process. The Planning Department developed cost  
11 estimates to the extent possible for all proposed improvements. These are summarized by  
12 use type in Table 1. Cost projections in Table 1 are realistic estimates made by the Planning  
13 Department of the actual costs for improvements needed to support new development. More  
14 information on these cost estimates is located in the Market and Octavia Community  
15 Improvements Program Document. Cost estimates for some items on Table 1 are to be  
16 determined through ongoing analyses conducted in coordination with implementation of the  
17 Market and Octavia Plan Community Improvements Program. In many cases these projects  
18 require further design work, engineering, and environmental review, which may alter the  
19 nature of the improvements; the cost estimates are still reasonable approximates for the  
20 eventual cost of providing necessary community improvements to respond to identified  
21 community needs. The Board of Supervisors is not committing to the implementation of any  
22 particular project at this time. Projects may be substituted for like projects should new  
23 information from the Citizens Advisory Committee, the Interagency Plan Implementation  
24 Committee, other stakeholders, or the environmental review process illustrate that substitute

25

1 projects should be prioritized. Cost projections will be updated at a minimum approximately  
 2 every five years after adoption.

3 Table 1.

4 Cost of proposed community improvements in the Market and Octavia Plan Area.

5 Market and Octavia	
6 Community Improvements	
7 Greening	8 \$58,310,000
9 Parks	10 \$6,850,000
11 Park Improvements	12 \$ TBD
13 Vehicle	14 \$49,260,000
15 Pedestrian	16 \$23,760,000
17 Transportation	18 \$81,180,000
19 Transit User 20 Infrastructure	21 \$ TBD
22 Bicycle	23 \$1,580,000
24 Childcare	25 \$17,170,000
Library Materials	\$690,000
26 Recreational 27 Facilities	28 \$15,060,000
29 Future Studies	30 \$460,000
31 Program Administration	32 \$4,730,000

1 Total	\$258,900,000
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2 Provision of affordable housing needs are addressed in Sections ~~413 313~~ and ~~415 315~~  
3 of ~~the Planning~~ this Code. Additionally subsidized affordable housing may be granted a waiver  
4 from the Market and Octavia Community Improvement Fee as provided for in ~~s~~Section 406 of  
5 this Article ~~326.3 (h)(3)~~. This waiver may be leveraged as a local funding 'match' to Federal and  
6 State affordable housing subsidies enabling affordable housing developers to capture greater  
7 subsidies for projects in the Plan Area.

8 E. Sharing the Burden. As detailed above, new development in the Plan Area will  
9 clearly generate new infrastructure demands.

10 To fund such community infrastructure and amenities, new development in the district  
11 shall be assessed development impact fees proportionate to the increased demand for such  
12 infrastructure and amenities. The City will use the proceeds of the fee to build new  
13 infrastructure and enhance existing infrastructure, as described in preceding sections. A  
14 Community ~~Improvements~~ Infrastructure Impact Fee shall be established for the Van Ness and  
15 Market Downtown Residential Special Use District (VNMDR-SUD), and the Neighborhood  
16 Commercial Transit (NCT) and Residential Transit Oriented (RTO) Districts as set forth  
17 herein.

18 Many counties, cities and towns have one standardized impact fee schedule that  
19 covers the entire municipality. Although this type of impact fee structure works well for some  
20 types of infrastructure, such as affordable housing and basic transportation needs, it cannot  
21 account for the specific improvements needed in a neighborhood to accommodate specific  
22 growth. A localized impact fee gives currency to the community planning process and  
23 encourages a strong nexus between development and infrastructure improvements.

24 Development impact fees are an effective approach to achieve neighborhood  
25 mitigations and associate the costs with new residents, workers, and a new kind of

1 development. The proposed Market and Octavia Community *Improvements Infrastructure*  
2 Impact Fee would be dedicated to infrastructure improvements in the Plan Area, directing  
3 benefits of the fund clearly to those who pay into the fund, by providing necessary  
4 infrastructure improvements, needed to serve new development. The net increases in  
5 individual property values in these areas due to the enhanced neighborhood amenities  
6 financed with the proceeds of the fee are expected to exceed the payments of fees by project  
7 sponsors.

8 The fee rate has been calculated by the Planning Department based on accepted  
9 professional methods for the calculation of such fees. The Market and Octavia Community  
10 Improvements Program Document contains a full discussion of impact fee calculation. Cost  
11 estimates are based on an assessment of the potential cost to the City of providing the  
12 specific improvements described in the Market and Octavia Plan Area. The *Planning*  
13 Department assigned a weighted value to new construction based on projected population  
14 increases in relation to the total population.

15 The proposed fee would cover less than 80% of the estimated costs of the community  
16 improvements calculated as necessary to mitigate the impacts of new development. By  
17 charging developers less than the maximum amount of the justified impact fee, the City avoids  
18 any need to refund money to developers if the fees collected exceed costs. The proposed  
19 fees only cover impacts caused by new development and are not intended to remedy existing  
20 deficiencies; those costs will be paid for by public, community, and other private sources.

21 The Market and Octavia community improvements program relies on public, private,  
22 and community capital. Since 2000, when the Market and Octavia planning process was  
23 initiated, the area has seen upwards of \$100 million in public investment, including the  
24 development of Octavia Boulevard, the new Central freeway ramp, Patricia's Green in Hayes  
25 Valley and related projects. Additionally private entities have invested in the area by improving

1 private property and creating new commercial establishments. Community members have  
2 invested by creating a Community Benefits District in the adjacent Castro neighborhood,  
3 organizing design competitions, and lobbying for community programming such as a rotating  
4 arts program on Patricia's Green in Hayes Valley. Project sponsor contributions to the Market  
5 and Octavia Community Improvements Fund will help leverage additional public and  
6 community investment.

7 As a result of this new development, projected to occur over a 20-year period, property  
8 tax revenue is projected to increase by as much as \$28 million annually when projected  
9 housing production is complete. Sixteen million dollars of this new revenue will be diverted  
10 directly to San Francisco (see the Market and Octavia Community Improvements Program  
11 Document for a complete discussion of increased property tax revenue). These revenues will  
12 fund improvements and expansions to general City services, including police, fire, emergency,  
13 and other services needed to partially meet increased demand associated with new  
14 development. New development's local impact on community infrastructure will be greater in  
15 the Market and Octavia Plan Area, relative to those typically funded by City government  
16 through property tax revenues. Increased property taxes will contribute to continued  
17 maintenance and service delivery of new infrastructure and amenities. The City should pursue  
18 state enabling legislation that directs growth related increases in property tax directly to the  
19 neighborhood where growth is happening, similar to the redevelopment agencies' Tax  
20 Increment Financing tool. If such a revenue dedication tool does become available, the  
21 Planning Department should pursue an ordinance to adopt and apply a tax increment district  
22 to the Market and Octavia Plan Area even if the Plan is already adopted by the Board of  
23 Supervisors and in effect. The relative cost of capital improvements, along with the reduced  
24 role of State and Federal funding sources, increases the necessity for development impact  
25 fees to cover these costs. Residential and commercial impact fees are one of the many

1 revenue sources necessary to mitigate the impacts of new development in the Market and  
2 Octavia Plan Area.

3 SEC. ~~421.2~~ 326.2. DEFINITIONS. See Section 401 of this Article. ~~The~~ *The following*  
4 *definitions shall govern this ordinance:*

5 (a) ~~—~~ *Definitions from Section 318.2 shall apply unless otherwise noted in this Section.*

6 (b) ~~—~~ *"Community facilities" shall mean all uses as defined under Section 209.4(a) and*  
7 *209.3(d) of this Code.*

8 (c) ~~—~~ *"Commercial use" shall mean any structure or portion thereof intended for occupancy*  
9 *by retail or office uses that qualify as an accessory use, as defined and regulated in Sections 204*  
10 *through 204.5.*

11 (d) ~~—~~ *"Commercial development project" shall mean any new construction, addition,*  
12 *extension, conversion or enlargement, or combination thereof, of an existing structure which includes*  
13 *any occupied floor area of commercial use; provided, however, that for projects that solely comprise*  
14 *an addition to an existing structure which would add occupied floor area in an amount less than 20*  
15 *percent of the occupied floor area of the existing structure, the provisions of this Section shall only*  
16 *apply to the new occupied square footage.*

17 (e) ~~—~~ *"In-Kind Agreement" shall mean an agreement acceptable in form and substance to the*  
18 *City Attorney and the Director of Planning between a project sponsor and the Planning Commission*  
19 *subject to the approval of the Planning Commission in its sole discretion to provide a specific set of*  
20 *community improvements, at a specific phase of construction, in lieu of contribution to the Market and*  
21 *Octavia Community Improvement Fund. The In-Kind Agreement shall also mandate a covenant of the*  
22 *project sponsor to reimburse all City agencies for their administrative and staff costs in negotiating,*  
23 *drafting, and monitoring compliance with the In-Kind Agreement. The City also shall require the*  
24 *project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to*  
25

1 ~~the Planning Department and the City Attorney, to secure the City's right to receive payment as~~  
2 ~~described in the preceding sentence.~~

3 (f) ~~—"Net addition of occupiable square feet of commercial use" shall mean oOccupied floor~~  
4 ~~area, as defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-residential~~  
5 ~~use excluding common areas such as hallways, maintenance facilities and lobbies, less the occupied~~  
6 ~~floor area in any structure demolished or rehabilitated as part of the proposed commercial~~  
7 ~~development project which occupied floor area was used primarily and continuously for commercial~~  
8 ~~use and was not accessory to any use other than residential use for at least five years prior to Planning~~  
9 ~~Department approval of the residential development project subject to this Section, or for the life of the~~  
10 ~~structure demolished or rehabilitated, whichever is shorter.~~

11 (g) ~~—"Program." shall mean the Market and Octavia Community Improvements as described~~  
12 ~~in the Market and Octavia Community Improvements Program Document.~~

13 (h) ~~—"Program Area" shall mean the Market and Octavia Plan Area in Map 1 (Land Use~~  
14 ~~Plan) of the Market and Octavia Area Plan of the San Francisco General Plan, which includes those~~  
15 ~~districts zoned RTO, NCT, or any neighborhood specific NCT, a few parcels zoned RH-1 or RH-2, and~~  
16 ~~those parcels within the Van Ness and Market Downtown Residential Special Use District~~  
17 ~~(VMDRSUD).~~

18 (i) ~~—"Waiver Agreement" means an agreement acceptable in form and substance to the~~  
19 ~~Planning Department and the City Attorney, under which the City agrees to waive all or a portion of~~  
20 ~~the Community Improvements Impact Fee, conditioned upon the project sponsor's covenant to make a~~  
21 ~~good faith effort to secure the formation of a Community Facilities (Mello-Roos) District, if such a~~  
22 ~~district has not already been successfully formed, and in any event to take all steps necessary to~~  
23 ~~support the construction of a portion of the improvements described in Sections 326.6 (the "CFD~~  
24 ~~Improvements") using the proceeds of one or more series of special tax bonds or moneys otherwise~~  
25 ~~made available by such a district ("CFD Funds"). Such agreement shall include a specific description~~



1 of the CFD Improvements and a specific date for the commencement of such improvements. Such  
2 agreement shall also provide that the project sponsor shall pay the full amount of the waived  
3 Community Improvements Impact Fee plus interest in the event that CFD Funds are not received in  
4 amounts necessary to commence construction of the CFD Improvements on the stated commencement  
5 date listed in the Waiver Agreement. The City also shall require the project sponsor to provide a letter  
6 of credit or other instrument, acceptable in form and substance to the Planning Department and the  
7 City Attorney, to secure the City's right to receive payment as described in the preceding sentence.

8 (j) — "~~Residential Space Subject to the Community Improvement Impact Fee.~~" means ~~e~~Each  
9 net addition of occupiable square feet within the Program Area which results in an additional  
10 residential unit or contributes to a 20 percent increase of residential space from the time that this  
11 ordinance is adopted within the Market and Octavia Community Improvements Fund.

12 (k) — "~~Commercial Space Subject to the Community Improvement Impact Fee~~" means for each  
13 net addition of occupiable square feet within the Program Area which results in an additional  
14 commercial unit or any increased commercial capacity that is beyond 20 percent of the non-residential  
15 capacity at the time that this ordinance is adopted.

16 SEC. ~~421.3~~ 326.3. APPLICATION OF COMMUNITY INFRASTRUCTURE IMPACT FEE.

17 (a) Application. Section 421.1 et seq. shall apply to any development project located in the  
18 Market and Octavia Infrastructure Program Area, which Program Area. ~~The Market and Octavia~~  
19 ~~Community Improvements Neighborhood Program is hereby established and shall be implemented~~  
20 ~~through district-specific community improvements funds which apply to the following areas: The~~  
21 ~~Program Area~~ includes properties identified as part of the Market and Octavia Plan Area in  
22 Map 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General  
23 Plan.

1           **(b)** Amount of Market and Octavia Community Infrastructure Impact Fees; Timing of  
2 Payment. The sponsor shall pay ~~to the Treasurer~~ Market and Octavia Community Improvements  
3 Infrastructure Impact Fees of the following amounts:

4           (1) Unless a Waiver Agreement has been executed, ~~P~~prior to the issuance by DBI of the  
5 first construction document ~~site or building permit~~ for a residential development project, or  
6 residential component of a mixed use project within the Program Area, a \$10.00 Community  
7 Improvement Infrastructure Impact Fee in the Market and Octavia Plan Area, as described in (a)  
8 above, for the Market and Octavia Community Improvements Fund, for each net addition of  
9 occupiable square feet which results in an additional residential unit or contributes to a 20  
10 percent increase of residential space from the time that Section 421.1 et seq. ~~this ordinance~~ is  
11 adopted.

12           (2) Unless a Waiver Agreement has been executed, ~~P~~prior to the issuance by DBI of the  
13 first construction document ~~site or building permit~~ for a commercial development project, or  
14 commercial non-residential component of a mixed use project within the Program Area, a \$4.00  
15 Community Improvement Impact Fee in the Market and Octavia Plan Area, as described in (a)  
16 above, for the Market and Octavia Community Improvements Fund for each net addition of  
17 occupiable square feet which results in an additional commercial non-residential capacity that is  
18 beyond 20 percent of the non-residential capacity at the time that Section 421.1 et seq. ~~this~~  
19 ordinance is adopted.

20           **(c)** ~~Upon request of the sponsor and upon payment of the Community Improvements Impact~~  
21 ~~Fee in full to the Treasurer, the execution of a Waiver Agreement or In-Kind Agreement approved as~~  
22 ~~described herein, the Treasurer shall issue a certification that the obligations of this section of the~~  
23 ~~Planning Code have been met. The sponsor shall present such certification to the Planning Department~~  
24 ~~and DBI prior to the issuance by DBI of the first site or building permit for the development project.~~  
25 ~~DBI shall not issue the site or building permit without the Treasurer's certification. Any failure of the~~

1 ~~Treasurer, DBI, or the Planning Department to give any notice under this Section shall not relieve a~~  
2 ~~sponsor from compliance with this Section. Where DBI inadvertently issues a site or building permit~~  
3 ~~without payment of the fee, Planning and DBI shall not issue any further permits or a certificate of~~  
4 ~~occupancy for the project without notification from the Treasurer that the fees required by this Section~~  
5 ~~have been paid or otherwise satisfied. The procedure set forth in this Subsection is not intended to~~  
6 ~~preclude enforcement of the provisions of this Section under any other section of this Code, or other~~  
7 ~~authority under the laws of the State of California.~~

8 (c) ~~(d)~~ Fee Adjustments.

9 (1) Inflation Adjustments. ~~The Controller may make annual adjustments of the~~  
10 ~~development fees for inflation in accordance with Section 409 of this Article. The Planning Commission~~  
11 ~~may adjust the amount of the development impact fees set forth in the annual fee adjustments on an~~  
12 ~~annual basis before the annual budget is approved.~~ The Market and Octavia Community

13 ~~Improvements Infrastructure~~ Impact Fee adjustments should be based on the following factors:

14 (a) the percentage increase or decrease in the cost to acquire real property for public park  
15 and open space use in the area and (b) the percentage increase or decrease in the  
16 construction cost of providing these and other improvements listed in Section ~~421.1(E)~~ §  
17 ~~326.1(E)(a)~~. Fluctuations in the construction market can be gauged by indexes such as the  
18 Engineering News Record or a like index. Revision of the fee should be done in coordination  
19 with revision to other like fees, such as those detailed in Sections 247, ~~414 313~~, ~~414 314~~, ~~415~~  
20 ~~315~~, ~~418 318~~, and ~~419 319~~ of ~~this the Planning~~ Code. The Planning Department shall provide  
21 notice of any fee adjustment including the formula used to calculate the adjustment, on its  
22 website and to any interested party who has requested such notice at least 30 days prior to  
23 the adjustment taking effect.

24 (2) Program Adjustments. Upon Planning Commission and Board approval  
25 adjustments may be made to the fee to reflect changes to (a) the list of planned community

1 improvements listed in Section 421.1(D) § 326.1(D); (b) re-evaluation of the nexus based on  
2 new conditions; or (c) further planning work which recommends a change in the scope of the  
3 community improvements program. Changes may not be made to mitigate temporary market  
4 conditions. Notwithstanding the foregoing, it is the intent of the Board of Supervisors that it is  
5 not committing to the implementation of any particular project at this time and changes to,  
6 additions, and substitutions of individual projects listed in the related program document can  
7 be made without adjustment to the fee rate or Section 421.1 et seq. ~~this ordinance~~ as those  
8 individual projects are placeholders that require further public deliberation and environmental  
9 review.

10 (3) Unless and until an adjustment has been made, the schedule set forth in this  
11 Section 421.1 et seq. ~~ordinance~~ shall be deemed to be the current and appropriate schedule of  
12 development impact fees.

13 (d) (e) Option for In-Kind Provision of Community ~~Improvements~~ Infrastructure and Fee  
14 Credits. The Planning Commission may reduce the Market and Octavia Community  
15 ~~Improvements Infrastructure~~ Impact Fee ~~described in (b) above~~ owed for specific development  
16 ~~projects proposals~~ in cases where a project sponsor has entered into an In-Kind Agreement  
17 with the City to provide In-Kind improvements in the form of streetscaping, sidewalk widening,  
18 neighborhood open space, community center, and other improvements that result in new  
19 public infrastructure and facilities described in Section 421.1(E)(a) 326.1(E)(a) or similar  
20 substitutes. For the purposes of calculating the total value of In-Kind community  
21 improvements, the project sponsor shall provide the ~~Planning~~ Department with a cost estimate  
22 for the proposed In-Kind community improvements from two independent contractors or, if  
23 relevant, real estate appraisers. If the City has completed a detailed site specific cost estimate  
24 for a planned community improvement this may serve as one of the cost estimates, required  
25 by this clause; if such an estimate is used it must be indexed to current cost of construction.

1 Based on these estimates, the Director ~~of Planning~~ shall determine their appropriate value and  
2 the ~~Planning~~ Commission may reduce the Community ~~Improvements~~ Infrastructure Impact Fee  
3 assessed to that project proportionally. Approved In-Kind improvements should generally  
4 respond to priorities of the community, or fall within the guidelines of approved procedures for  
5 prioritizing projects in the Market and Octavia Community Improvements Program. Open  
6 space or streetscape improvements, including off-site improvements per the provisions of this  
7 Special Use District, proposed to satisfy the usable open space requirements of Section 135  
8 and 138 of this Code are not eligible for credit toward the contribution as In-Kind  
9 improvements. No credit toward the contribution may be made for land value unless  
10 ownership of the land is transferred to the City or a permanent public easement is granted, the  
11 acceptance of which is at the sole discretion of the City. A permanent easement shall be  
12 valued at no more than 50% of appraised fee simple land value, and may be valued at a lower  
13 percentage as determined by the Director of Planning in ~~its~~ his or her sole discretion. Any  
14 proposal for contribution of property for public open space use shall follow the procedures of  
15 Subsection (6)(D) below. The ~~Planning~~ Commission may reject In-Kind improvements if they  
16 do not fit with the priorities identified in the plan, by the Interagency Plan Implementation  
17 Committee (see Section 36 of the Administrative Code), the Market and Octavia Citizens  
18 Advisory Committee (Section 341.5) or other prioritization processes related to Market and  
19 Octavia Community Improvements Programming.

20 ~~(e)~~ ~~(f)~~ Option for Provision of Community Improvements via a Community Facilities  
21 (Mello-Roos) District. The Planning Commission may waive the Community ~~Improvements~~  
22 Infrastructure Impact Fee described in Section 421.3(b) ~~326.3(b)~~ above, either in whole or in  
23 part, for specific development proposals in cases where one or more project sponsors have  
24 entered into a Waiver Agreement with the City approved by the Board of Supervisors. Such  
25 waiver shall not exceed the value of the improvements to be provided through the Mello Roos

1 district. In consideration of a Mello-Roos waiver agreement, the Board of Supervisors shall  
2 consider whether provision of Community Improvements through a Community Facilities  
3 (Mello-Roos) District will restrict funds in ways that will limit the City's ability to provide  
4 community amenities according to the established community priorities detailed in the Market  
5 and Octavia Area Plan, or to further amendments. The Board of Supervisors shall have the  
6 opportunity to comment on the structure of bonds issued for Mello Roos Districts. The Board  
7 of Supervisors may decline to enter into a Waiver Agreement if the establishment of a Mello  
8 Roos district does not serve the City or Area Plan's objectives related to Market and Octavia  
9 Community Improvements and general balance of revenue streams.

10 ~~(f)~~ ~~(g)~~ Applicants who provide community improvements through a Community  
11 Facilities (Mello Roos) District or an In-Kind development will be responsible for all additional  
12 time and materials costs including, Planning Department staff, City Attorney time, and other  
13 costs necessary to administer the alternative to the direct payment of the fee. These costs  
14 shall be paid in addition to the community improvements obligation and billed no later than  
15 expenditure of bond funds on approved projects for Districts or promptly following satisfaction  
16 of the In-Kind Agreement. The *Planning* Department may designate a base fee for the  
17 establishment of a Mello Roos District, that project sponsors would be obliged to pay before  
18 the district is established. The base fee should cover basic costs associated with establishing  
19 a district but may not account for all expenses, a minimum estimate of the base fee will be  
20 published annually by the *Planning* Department.

21 ~~(h)~~ — *Waiver or Reduction:*

22 ~~(I)~~ — *Waiver or Reduction Based on Absence of Reasonable Relationship.*

23 ~~(A)~~ — *A project applicant of any project subject to the requirements in this Section may appeal*  
24 *to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the*  
25 *absence of any reasonable relationship or nexus between the impact of development and the amount of*

1 *the fee charged or for the reasons set forth in subsection (3) below, a project applicant may request a*  
2 *waiver from the Board of Supervisors.*

3 *(B) — Any appeal of waiver requests under this clause shall be made in writing and filed with*  
4 *the Clerk of the Board no later than 15 days after the date the sponsor is required to pay to the*  
5 *Treasurer the fee as required in Section 326.3(b). The appeal shall set forth in detail the factual and*  
6 *legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider*  
7 *the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the*  
8 *burden of presenting substantial evidence to support the appeal, including comparable technical*  
9 *information to support appellant's position. The decision of the Board shall be by a simple majority*  
10 *vote and shall be final. If a reduction, adjustment, or waiver is granted, any change of use or scope of*  
11 *the project shall invalidate the waiver, adjustment, or reduction of the fee. If the Board grants a*  
12 *reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent*  
13 *of the reduction, adjustment or waiver to the Treasurer and Planning Department.*

14 *(2) — Waiver or Reduction, Based on Housing Affordability or Duplication of Fees. This*  
15 *section details waivers and reductions available by right for project sponsors that fulfill the*  
16 *requirements below. The Planning Department shall publish an annual schedule of specific values for*  
17 *waivers and reductions available under this clause. Planning Department staff shall apply these*  
18 *waivers based on the most recent schedule published at the time that fee payment is made.*

19 *(A) — A project applicant subject to the requirements of this Section who has received an*  
20 *approved building permit, conditional use permit or similar discretionary approval and who submits a*  
21 *new or revised building permit, conditional use permit or similar discretionary approval for the same*  
22 *property shall be granted a reduction, adjustment or waiver of the requirements of Section of the*  
23 *Planning Code with respect to the square footage of construction previously approved.*

24 *(B) — The Planning Commission shall give special consideration to offering reductions or*  
25 *waivers of the impact fee to housing projects on the grounds of affordability in cases in which the State*

1 ~~of California, the Federal Government, the Mayor's Office of Housing, the San Francisco~~  
2 ~~Redevelopment Agency, or other public subsidies target new housing for households at or below 50% of~~  
3 ~~the Area Median Income as published by HUD. This waiver clause intends to provide a local 'match'~~  
4 ~~for these deeply subsidized units and should be considered as such by relevant agencies. Specifically~~  
5 ~~these units may be rental or ownership opportunities but they must be subsidized in a manner which~~  
6 ~~maintains their affordability for a term no less than 55 years. Project sponsors must demonstrate to the~~  
7 ~~Planning Department staff that a governmental agency will be enforcing the term of affordability and~~  
8 ~~reviewing performance and service plans as necessary, usually this takes the form of a deed restriction.~~  
9 ~~Projects that meet the requirements of this clause are eligible for a 100 percent fee reduction until an~~  
10 ~~alternative fee schedule is published by the Planning Department. Ideally some contribution will be~~  
11 ~~made to the Market and Octavia Community Improvement Program, as these units will place an equal~~  
12 ~~demand on community improvements infrastructure. This waiver clause shall not be applied to units~~  
13 ~~built as part of a developer's efforts to meet the requirements of the Inclusionary Affordable Housing~~  
14 ~~Program, and Section 315.~~

15 ~~(C) — The City shall make every effort not to assess duplicative fees on new development. This~~  
16 ~~section discusses the method to determine the appropriate reduction amount for known possible~~  
17 ~~conflicts. In general project sponsors are only eligible for fee waivers under this clause if a~~  
18 ~~contribution to another fee program would result in a duplication of charges for a particular type of~~  
19 ~~community infrastructure. Therefore applicants may only receive a waiver for the portion of the Market~~  
20 ~~and Octavia Community Improvements Fund that addresses that infrastructure type. Refer to Table 2~~  
21 ~~for fee composition by infrastructure type. The Planning Department shall publish a schedule annually~~  
22 ~~of all known opportunities for waivers and reductions under this clause, including the specific rate.~~  
23 ~~Requirements under Section 135 and 138 do not qualify for waiver or reductions. Should future fees~~  
24 ~~pose a duplicative charge, such as a Citywide open space or childcare fee, the same methodology shall~~  
25 ~~apply and the Planning Department shall update the schedule of waivers or reductions accordingly.~~



1 *Additionally the City should work to ensure that fees levied on development in the Plan Area through*  
 2 *other fee programs should be targeted towards improvements identified through the Market and*  
 3 *Octavia Plan, especially fees that allow project sponsors to obtain a waiver from the Market and*  
 4 *Octavia Community Improvement's Fund.*

5 (i)

6 Table 2. Breakdown of Market and Octavia Community Improvements Fee by  
 7 Infrastructure Type.

8 Components of Proposed Impact Fee

9

10 --	11 Residential	12 Commercial
13 Greening	14 34.1%	15 50.2%
16 Parks	17 8.2%	18 13.8%
19 Park 20 Improvements	21 tbd	22 tbd
23 Vehicle	24 0.4%	25 0.4%
26 Pedestrian	27 6.9%	28 6.2%
29 Transportation	30 22.2%	31 20.1%
32 Transit User 33 Infrastructure	34 tbd	35 tbd
36 Bicycle	37 0.5%	38 0.4%
39 Childcare	40 8.3%	41 0.0%
42 Library	43 0.9%	44 0.0%

1	Materials		
2	Recreational Facilities	13.1%	0.0%
3	Future Studies	0.2%	.4%
4	Program Administration	5.1%	8.6%

6 (ii) Applicants that are subject to the downtown parks fee, Section 139, can reduce  
7 their contribution to the Market and Octavia Community Improvements Fund by one dollar for  
8 every dollar that they contribute to the downtown parks fund, the total fee waiver or reduction  
9 granted through this clause shall not exceed 8.2 percent of calculated contribution for  
10 residential development or 13.8 percent for commercial development.

11 SEC. 421.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE.

12 (a) Determination of Requirements. The Department shall determine the applicability of  
13 Section 421.1 et seq. to any development project requiring a building or site permit and, if Section  
14 421.1 is applicable, the number of gross square feet of each type of space subject to its requirements,  
15 and shall impose these requirements as a condition of approval for issuance of the building or site  
16 permit for the project to mitigate the development impacts. The project sponsor shall supply any  
17 information necessary to assist the Department in this determination.

18 (b) Notice to Development Fee Collection Unit of Requirements. After the Department has  
19 made its final determination of the net addition of gross square feet of each type of space subject to  
20 Section 421.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its  
21 determination in addition to the other information required by Section 402(b) of this Article.

22 (c) Sponsor's Choice to Fulfill Requirements. Prior to issuance of a building or site permit  
23 for a development project subject to the requirements of Section 421.1 et seq., the sponsor shall elect  
24 an option under Section 421.3 to fulfill the requirements of Section 421.1 et seq. and notify the  
25 Department of their choice.

1           (d) Department's Notice to Development Fee Collection Unit of Sponsor's Choice. After the  
2 project sponsor has notified the Department of the choice to fulfill the requirements of Section 421.1 et  
3 seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the  
4 project sponsor's choice.

5           (e) Development Fee Collection Unit Notice to Department Prior to Issuance of the First  
6 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing  
7 or electronically to the Department prior to issuing the first certificate of occupancy for any  
8 development project subject to Section 421.1 et seq. that has elected to fulfill all or part of the  
9 requirement with an option other than payment of a fee. If the Department notifies the Unit at such time  
10 that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all  
11 certificates of occupancy until the subject project is brought into compliance with the requirements of  
12 Section 421.1 et seq.

13           (f) In the event that the Department or the Commission takes action affecting any  
14 development project subject to Section 421.1 et seq. and such action is subsequently modified,  
15 superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board  
16 of Supervisors, or by court action, the procedures of Section 402(c) shall be followed.

17           ~~SEC. 326.4. LIEN PROCEEDINGS.~~

18           ~~(a) A sponsor's failure to comply with the requirements of Sections 326.3, shall constitute~~  
19 ~~cause for the City to record a lien against the development project in the sum of the fees required under~~  
20 ~~this ordinance. The fee required by 326.3(b) of this ordinance is due and payable to the Treasurer prior~~  
21 ~~to issuance of the first building or site permit for the development project unless a Waiver Agreement~~  
22 ~~has been executed. If, for any reason, the fee remains unpaid following issuance of the permit and no~~  
23 ~~Waiver Agreement has been executed, any amount due shall accrue interest at the rate of one and one-~~  
24 ~~half percent per month, or fraction thereof, from the date of issuance of the permit until the date of final~~  
25 ~~payment.~~

1           (b) ~~If, for any reason, the fee imposed pursuant to this ordinance remains unpaid following~~  
2 ~~issuance of the permit, the Treasurer shall initiate proceedings in accordance with Article XX of~~  
3 ~~Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the fee,~~  
4 ~~including interest, a lien against all parcels used for the housing development project and shall send all~~  
5 ~~notices required by that Article to the owner of the property as well as the sponsor. The Treasurer shall~~  
6 ~~also prepare a preliminary report notifying the sponsor of a hearing to confirm such report by the~~  
7 ~~Board of Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall~~  
8 ~~contain the sponsor's name, a description of the sponsor's housing development project, a description~~  
9 ~~of the parcels of real property to be encumbered as set forth in the Assessor's Map Books for the~~  
10 ~~current year, a description of the alleged violation of this ordinance, and shall fix a time, date, and~~  
11 ~~place for hearing. The Treasurer shall cause this report to be mailed to the sponsor and each owner of~~  
12 ~~record of the parcels of real property subject to lien. Except for the release of lien recording fees~~  
13 ~~authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector pursuant to~~  
14 ~~this ordinance shall be held in trust by the Treasurer and deposited in the Market and Octavia~~  
15 ~~Community Improvements Fund established in Section 326.6.~~

16           (c) ~~Any notice required to be given to a sponsor or owner shall be sufficiently given or served~~  
17 ~~upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or owner~~  
18 ~~or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor or~~  
19 ~~owner at the official address of the sponsor or owner maintained by the Tax Collector for the mailing~~  
20 ~~of tax bills or, if no such address is available, to the sponsor at the address of the housing development~~  
21 ~~project, and to the applicant for the site or building permit at the address on the permit application.~~

22           ~~SEC. 326.5. COMMUNITY IMPROVEMENTS IMPACT FEE REFUND WHEN BUILDING~~  
23 ~~PERMIT EXPIRES PRIOR TO COMPLETION OF WORK AND COMMENCEMENT OF~~  
24 ~~OCCUPANCY.~~

1           ~~In the event a building permit expires prior to completion of the work on and commencement of~~  
2 ~~occupancy of a residential or commercial development project so that it will be necessary to obtain a~~  
3 ~~new permit to carry out any development, the obligation to comply with this ordinance shall be~~  
4 ~~cancelled, and any Community Improvements Impact Fee previously paid to the Treasurer shall be~~  
5 ~~refunded. If and when the sponsor applies for a new permit, the procedures set forth in this ordinance~~  
6 ~~regarding payment of the Community Improvements Impact Fee shall be followed.~~

7           SEC. ~~421.5~~ 326.6. MARKET AND OCTAVIA COMMUNITY IMPROVEMENTS FUND.

8           (a)     There is hereby established a separate fund set aside for a special purpose  
9 entitled the Market and Octavia Community Improvements Fund ("Fund"). All monies  
10 collected by ~~DBI~~ ~~the Treasurer~~ pursuant to Section ~~421.3(b)~~ 326.3(b) shall be deposited in a  
11 special fund maintained by the Controller. The receipts in the Fund to be used solely to fund  
12 community improvements subject to the conditions of this Section.

13           (b)     The Fund shall be administered by the Board of Supervisors.

14           (1)     All monies deposited in the Fund shall be used to design, engineer, acquire, and  
15 develop and improve neighborhood open spaces, pedestrian and streetscape improvements,  
16 community facilities, childcare facilities, and other improvements that result in new publicly-  
17 accessible facilities and related resources within the Market and Octavia Plan Area or within  
18 250 feet of the Plan Area. Funds may be used for childcare facilities that are not publicly  
19 owned or "publicly-accessible". Funds generated for 'library resources' should be used for  
20 materials at the Main Library, the Eureka Valley Library, or other library facilities that directly  
21 service Market and Octavia Residents. Funds may be used for additional studies and fund  
22 administration as detailed in the Market and Octavia Community Improvements Program  
23 Document. These improvements shall be consistent with the Market and Octavia Civic Streets  
24 and Open Space System as described in Map 4 of the Market and Octavia Area Plan of the  
25 General Plan, and any Market and Octavia Improvements Plan. Monies from the Fund may be

1 used by the Planning Commission to commission economic analyses for the purpose of  
2 revising the fee pursuant to Section 421.3(c) ~~326.3(d)~~ above, to complete an updated nexus  
3 study to demonstrate the relationship between development and the need for public facilities if  
4 this is deemed necessary.

5 (2) No portion of the Fund may be used, by way of loan or otherwise, to pay any  
6 administrative, general overhead, or similar expense of any public entity, except for the  
7 purposes of administering this fund. Administration of this fund includes time and materials  
8 associated with reporting requirements, facilitating the Market and Octavia Citizens Advisory  
9 Committee meetings, and maintenance of the fund. Total expenses associated with  
10 administration of the fund shall not exceed the proportion calculated in Table 2 ~~3~~ (above). All  
11 interest earned on this account shall be credited to the Market and Octavia Community  
12 Improvements Fund.

13 (c) With full participation by the Planning Department and related implementing  
14 agencies the Controller's Office shall file an annual report with the Board of Supervisors  
15 beginning 180 days after the last day of the fiscal year of the effective date of Section 421.1 et  
16 seq. this ordinance, which shall include the following elements: (1) a description of the type of  
17 fee in each account or fund; (2) Amount of the fee; (3) Beginning and ending balance of the  
18 accounts or funds including any bond funds held by an outside trustee; (4) Amount of fees  
19 collected and interest earned; (5) Identification of each public improvement on which fees or  
20 bond funds were expended and amount of each expenditure; (6) An identification of the  
21 approximate date by which the construction of public improvements will commence; (7) A  
22 description of any inter-fund transfer or loan and the public improvement on which the  
23 transferred funds will be expended; and (8) Amount of refunds made and any allocations of  
24 unexpended fees that are not refunded.

1           ~~Every fifth fiscal year following the first deposit into the account the following account~~  
2 ~~reporting shall be made by the Controller's office in coordination with the Planning Department: (1)~~  
3 ~~Purpose to which the fee is to be put; (2) Demonstrate a reasonable relationship between the fee and~~  
4 ~~the purpose for which it is charged; (3) Identify all sources and amounts of funding anticipated to~~  
5 ~~complete financing in incomplete improvements identified in this ordinance and subsequent reporting;~~  
6 ~~and (4) Designate the approximate dates on which the funding referred to above (3) is expected to be~~  
7 ~~deposited into the appropriate account or fund. The reporting requirements detailed in this section~~  
8 ~~refer to the current requirements under AB1600; and are detailed here to insure that this fund fulfills~~  
9 ~~all legal obligations as detailed by the State of California. Any amendments to AB1600 automatically~~  
10 ~~apply to the reporting requirements of this ordinance and the ordinance should be amended~~  
11 ~~accordingly.~~

12           (d) A public hearing shall be held by *both* the Recreation and Parks Commission~~s~~ to  
13 elicit public comment on proposals for the acquisition of property using monies in the Fund in  
14 the Fund or through agreements for In-Kind or Community Facilities (Mello-Roos) District that  
15 will ultimately be maintained by the Department of Recreation and Parks. Notice of public  
16 hearings shall be published in an official newspaper at least 20 days prior to the date of the  
17 hearing, which notice shall set forth the time, place, and purpose of the hearing. The Parks  
18 Commission~~s~~ may vote to recommend to the Board of Supervisors that it appropriate money  
19 from the Fund for acquisition of property for park use and for development of property  
20 acquired for park use.

21           (e) The Planning Commission shall work with other City agencies and commissions,  
22 specifically the Department of Recreation and Parks, DPW ~~Department of Public Works~~, and the  
23 Metropolitan Transportation Agency, to develop agreements related to the administration of  
24 the improvements to existing and development of new public facilities within public rights-of-  
25

1 way or on any acquired property designed for park use, using such monies as have been  
2 allocated for that purpose at a hearing of the Board of Supervisors.

3 (f) The Director of Planning shall have the authority to prescribe rules and  
4 regulations governing the Fund, which are consistent with this ~~ordinance~~ Section 421.1 et seq.  
5 The Director ~~of Planning~~ shall make recommendations to the Board regarding allocation of  
6 funds.

7 SEC. ~~421.6~~ 326.7. DIRECTOR OF PLANNING'S EVALUATION AND STUDY

8 The Planning Department shall fulfill all relevant evaluation, reporting and study  
9 requirements to insure that the fee program remains up to date. These requirements include  
10 those outlined in Section ~~421.6(c)~~ 326.6(e), 341.2, and 341.3 of ~~this~~ the Planning Code, and  
11 Section 36.4 of the Administrative Code. Fulfillment of these reporting requirements shall be  
12 coordinated to minimize staff time. Funds to fulfill these requirements should be considered  
13 monitoring and program administration.

14 SEC. ~~421.7~~ 326.8. TRANSPORTATION STUDIES AND FUTURE FEES.

15 (a) Purpose. Studies conducted by the City including the Transit Impact  
16 Development Fee nexus study, the ongoing Eastern Neighborhoods studies, and others  
17 indicate that new residential development and the creation of new commercial or residential  
18 parking facilities negatively impact the City's transportation infrastructure and services. The  
19 purpose of this Section is to authorize a nexus study establishing the impact of new residential  
20 development and new parking facilities, in nature and amount, on the City's transportation  
21 infrastructure and parking facilities and, if justified, to impose impact fees on residential  
22 development and projects containing parking facilities.

23 (b) Timing. No later than October 15, 2008, the City shall initiate a study as  
24 described below. The agencies described in subsection (c) shall develop a comprehensive  
25 scope and timeline of this study which will enable the Board of Supervisors to pursue policy



1 recommendations through the legislative process as soon as twelve months after the study's  
2 initiation.

3 (c) Process. The study shall be coordinated by the Municipal Transportation Agency  
4 (MTA) and the City Attorney's Office. The study shall build on existing Nexus Study work  
5 including recently published nexus studies for parks and recreation, childcare facilities, the  
6 existing Transit Development Impact Fee Nexus Study, and all relevant area plan nexus  
7 analysis. The MTA shall coordinate with all relevant government agencies including the San  
8 Francisco County Transportation Authority, the Planning Department, the Mayor's Office of  
9 Housing, the Controller's Office, the City Attorney's Office and the City Administrator by  
10 creating a task force that meets regularly to discuss the study and resultant policy and  
11 program recommendations. The MTA shall hire consultants as deemed appropriate to  
12 complete the technical analysis.

13 (d) Scope. The study shall determine the impact, in nature and amount, of new  
14 residential development and new parking facilities, including new individual parking spaces,  
15 on transportation infrastructure and services within the City and County of San Francisco. The  
16 study shall not consider or develop specific transportation infrastructure improvement  
17 recommendations. The study shall make policy and/or program a recommendations to the  
18 Board of Supervisors on the most appropriate mechanisms for funding new transportation  
19 infrastructure and services including but not limited to new residential transit impact fees and  
20 new parking impact fees.

21 (e) Springing Condition Projects Subject to Future Fees, Based on the findings of  
22 the above-referenced is study the City anticipates that the Board may adopt new impact fees  
23 to offset the impact of new parking facilities and residential development on San Francisco's  
24 transportation network. As the Market and Octavia Plan Area is one of the first transit oriented  
25 neighborhood plans in the City and County of San Francisco the City should strive for a

1 successful coordination of transit oriented development with adequate transportation  
2 infrastructure and services. All residential and commercial development projects in the Market  
3 and Octavia Plan Area that receive Planning Department or Commission approval on or after  
4 the effective date of this Section ordinance shall be subject to any future Citywide or Plan-  
5 specific parking impact fees or residential transit impact fees that are established before the  
6 project receives a first final certificate of occupancy. The Planning Department and Planning  
7 Commission shall make payment of any future residential transit impact fee or parking impact  
8 fee a condition of approval of all projects in the Market and Octavia Plan Area that receive  
9 Planning Department or Commission approval on or after the effective date of this Section  
10 ordinance, with the following maximum amounts;

11 (1) Parking Impact fee no more than \$5.00 per square foot of floor area dedicated to  
12 parking.

13 (2) Transit Impact fee no more than \$9.00 per square foot of residential and  
14 commercial floor area.

15 SEC. 422 formerly Section 331. BALBOA PARK COMMUNITY IMPROVEMENTS  
16 FUND.

17 Sections 422.1 through 422.5~~331 to 331.6~~, hereafter referred to as Section 422.1 et seq., set  
18 forth the requirements and procedures for the Balboa Park Community Improvements Fund.  
19 The effective date of these requirements shall be either April 17, 2009, which is the date that the  
20 requirements originally became effective, or the date a subsequent modification, if any, became  
21 effective.

22 SEC. 422.1 331.1. FINDINGS.

23 A. (a) New Residential and Non-Residential Uses. The Balboa Park Station Area Plan  
24 is a part of the Better Neighborhoods Program that recognizes population growth is beneficial  
25 in neighborhoods well-served by transit. As such, the Balboa Park Area Plan aims to

1 strengthen neighborhood character, the neighborhood commercial district, and transit by  
2 increasing the housing and retail capacity in the area. This project goal will also help to meet  
3 ABAG's projected demand to provide housing in the Bay Area by encouraging the  
4 construction of higher density housing. The Balboa Park Plan Area can better accommodate  
5 this growth because of its easy access to public transit, proximity to downtown, convenience  
6 of neighborhood shops to meet daily needs, and the availability of development opportunity  
7 sites. San Francisco's land constraints limit new housing construction to areas of the City not  
8 previously designated as residential areas, infill sites, or areas that can absorb increased  
9 density. The Balboa Park Plan Area presents an opportunity to both absorb increased density  
10 and provide infill development within easy walking distance to transit while maintaining  
11 neighborhood character. The Better Neighborhoods Program also calls for strong  
12 neighborhood commercial cores and a transit-oriented neighborhood requires a full range of  
13 neighborhood serving businesses. The Plan builds on existing neighborhood character and  
14 establishes new standards for amenities necessary for a transit-oriented neighborhood.

15 B. (b) Need for Public Improvements to Accompany New Uses. The amendments to  
16 the General Plan, Planning Code, and Zoning Maps that correspond to Section 422.1 et seq. this  
17 ordinance will permit an increased amount of new housing and other uses, as noted above.  
18 The Planning Department anticipates an increase of at least 1,780 new housing units within  
19 the next 20 years, and over 225 new jobs, as described in the Balboa Park Station Area Plan  
20 Draft Environmental Impact Report and the Community Improvements Program. This new  
21 development will have an impact on the Plan Area's neighborhood infrastructure. New  
22 development will generate needs for street improvements, transit improvements, and  
23 community facilities and services improvements. As described in the Balboa Park Community  
24 Improvements Program, on file with the Clerk of the Board in File No. 090179. The Balboa  
25 Park Station Area Plan addresses existing deficiencies and new impacts through a

1 comprehensive package of public benefits described in the Balboa Park Community  
2 Improvements Program. This Program will enable the City and County of San Francisco to  
3 provide necessary public infrastructure to new residents while increasing neighborhood  
4 livability and investment in the district.

5 C. ~~(e)~~ Project Feasibility. Due to the high cost of land within the City, it has been  
6 determined that the imposition of requirements and fees based on the full impact of new  
7 development would be overly burdensome to new development and hinder the City's policy  
8 goal of providing a significant amount of new housing. Therefore, impact fees have been set  
9 at a level that will not hinder this policy goal overall.

10 D. ~~(d)~~ Programmed Improvements. General public improvements and amenities  
11 needed to meet the needs of both existing residents, as well as those needs generated by  
12 new development, have been identified through a community planning processes. The  
13 Planning Department developed generalized cost estimates, based on similar project types  
14 implemented by the City in the relevant time period, to provide reasonable approximates for  
15 the eventual cost of providing necessary community improvements to respond to identified  
16 community needs. In some cases, design work, engineering, and environmental review will be  
17 required and may alter the nature of the improvements, as well as the sum total of the cost for  
18 these improvements.

19 E. ~~(e)~~ Balboa Park Impact Fee. Development impact fees are an effective approach to  
20 mitigate impacts associated with growth in population. The proposed Balboa Park Impact Fee  
21 would be dedicated to community improvements in the Plan Area; directing benefits of the  
22 fund to those who pay into the fund by providing the necessary infrastructure improvements  
23 needed to serve new development. The Planning Department has calculated the fee rate  
24 based on accepted professional methods for the calculation of such fees, and described fully  
25

1 in the Balboa Park Community Improvements Program, San Francisco Planning Department,  
2 Case No. 2004.1059U on file with the Clerk of the Board in File No. 090179.

3 The proposed fee would cover less than the full impact of new development. The  
4 proposed fee only covers a portion of impacts caused by new development and is not  
5 intended to remedy existing deficiencies. Existing deficiency costs will be paid for by the  
6 public, the community, and other private sources as described in the Balboa Park Community  
7 Improvements Program. Residential and non-residential impact fees are only one of many  
8 revenue sources necessary to implement the community improvements outlined in the Plan.

9 SEC. ~~422.2~~ ~~331.2~~. DEFINITIONS. See Section 401 of this Article. ~~Definitions from sSection~~  
10 ~~318.2 shall apply unless otherwise noted in this Section. The following definitions shall govern this~~  
11 ~~ordinance.~~

12 (a) ~~—"Residential Use" shall mean any type of use containing dwellings as defined in Section~~  
13 ~~209.1 of the Planning Code or containing group housing as defined in Section 209.2(a)-(c) of the~~  
14 ~~Planning Code, and 790.88, as relevant for the subject zoning district.~~

15 (b) ~~—"Non-Residential Use" use shall include everything not mentioned in the residential~~  
16 ~~definition, including but not limited to any structure or portion thereof intended for occupancy by~~  
17 ~~retail, office, commercial or other nonresidential uses defined in Section 217, 218, 219 and 221, and~~  
18 ~~also in 209.3 and 209.8 of the Planning Code. Publicly owned community facilities, including libraries~~  
19 ~~and recreational facilities, and privately owned child care facilities are not defined as a "non-~~  
20 ~~residential" use.~~

21 (c) ~~—"Non-Residential development project" shall mean any new construction, addition,~~  
22 ~~extension, conversion or enlargement, or combination thereof, of an existing structure that includes any~~  
23 ~~occupied floor area of a non-residential use; provided, however, that for projects that solely comprise~~  
24 ~~an addition to an existing structure that would add occupied floor area in an amount less than 20~~  
25

1 ~~percent of the occupied floor area of the existing structure, the provisions of this Section shall only~~  
2 ~~apply to the new occupied square footage.~~

3 ~~(d) — "Balboa Park Impact Fee" shall refer to the fee collected by the City to mitigate impacts~~  
4 ~~of new development as described in findings, above.~~

5 ~~(e) — "Balboa Park Community Improvements Fund" shall refer to the fund that all fee~~  
6 ~~revenue the City collects from the Balboa Park Impact Fee.~~

7 ~~(f) — "In-kind Improvements Agreement" shall mean an agreement acceptable in form and~~  
8 ~~substance to the City Attorney and the Planning Director between a project sponsor and the Planning~~  
9 ~~Department, subject to the approval of the Planning Commission, in its sole discretion, to provide a~~  
10 ~~specific set of public benefits, at a specific phase of construction, in lieu of monetary contribution to the~~  
11 ~~Balboa Park Community Improvements Fund.~~

12 ~~(g) — "Net addition of gross square feet of non-residential space" shall mean gross floor area~~  
13 ~~as defined in Planning Code Section 102.9 to be occupied by, or primarily serving, any non-residential~~  
14 ~~use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed~~  
15 ~~development project space used primarily and continuously for the same non-residential use within the~~  
16 ~~same economic activity category. This space shall be accessory to any use other than that same non-~~  
17 ~~residential use for five years prior to Planning Commission approval of the development project~~  
18 ~~subject to this Section or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

19 ~~(h) — "Net addition of gross square feet of residential space ——" shall mean g — Gross~~  
20 ~~floor area as defined in Planning Code Section 102.9 to be occupied by, or primarily serving,~~  
21 ~~residential use, less the gross floor area in any structure demolished or rehabilitated as part of the~~  
22 ~~proposed residential development project space used primarily and continuously for residential use~~  
23 ~~and not accessory to any use other than residential use for five years prior to Planning Commission~~  
24 ~~approval of the development project subject to this Section or for the life of the structure demolished or~~  
25 ~~rehabilitated whichever is shorter.~~

1 (i) ~~—"Project Area" shall mean the Balboa Park Plan Area in Figure 1 of the Balboa Park~~  
2 ~~Station Area Plan of the San Francisco General Plan.~~

3 (j) ~~—"Waiver Agreement" means an agreement acceptable in form and substance to the~~  
4 ~~Planning Department and the City Attorney, under which the City agrees to waive all or a portion of~~  
5 ~~the Balboa Park Impact Fee, provided the sponsor has demonstrated a hardship in achieving those~~  
6 ~~objectives as well as all the requirements of the Plan.~~

7 (k) ~~—"Residential Space Subject to the Balboa Park Impact Fee" means each net addition of~~  
8 ~~gross square feet within the Project Area which results in a net new residential unit.~~

9 (l) ~~—"Non-Residential Space Subject to the Balboa Park Impact Fee" means each net~~  
10 ~~addition of gross square feet within the Project Area that contributes to a 20 percent increase in~~  
11 ~~commercial capacity of an existing structure.~~

12 SEC. ~~422.3~~ 331.3. APPLICATION OF COMMUNITY IMPROVEMENT IMPACT FEE.

13 (a) Application. ~~Project Area. The Balboa Park Community Improvements Fund is hereby~~  
14 ~~established. It shall be implemented in part through the Balboa Park Impact Fee that applies to the~~  
15 ~~Project Area and includes~~ Section 422.1 et seq. shall apply to any development project located in the  
16 Balboa Park Community Improvements Program Area, which includes all properties identified as  
17 part of the Balboa Park Station Area Plan in Figure 1 of the San Francisco General Plan.

18 (b) Amount of Fee.

19 (1) Residential Uses: \$8.00 per net addition of gross square feet which results in an  
20 additional residential unit or contributes to a 20 percent increase of residential floor area at the time  
21 that Section 422.1 et seq. was adopted in any development project with a residential use located within  
22 the Program Area; and

23 (2) Non-Residential Uses: \$1.50 per net addition of gross square feet which results in an  
24 additional non-residential floor area that is beyond 20 percent of the non-residential floor area at the  
25 time that Section 422.1 et seq. was adopted in any development project with a non-residential use

1 ~~located within the Program Area. Fees shall be charged on net additions of gross square feet which~~  
2 ~~result in a net new residential unit or contribute to a 20 percent increase of gross square feet non-~~  
3 ~~residential space in an existing structure. Fees shall be assessed on residential use and on non-~~  
4 ~~residential use with no substitutions across uses. Fees shall be assessed on mixed use projects~~  
5 ~~according to the gross square feet of each use in the project.~~

6 (b) ~~— Prior to the issuance by the Department of Building Inspection of the first site or~~  
7 ~~building permit for a residential development project or residential component of a mixed use project~~  
8 ~~within the Project Area, the sponsor of any project containing residential space subject to the Balboa~~  
9 ~~Park Impact Fee shall pay to the Treasurer \$8.00 per gross square foot.~~

10 (c) ~~— Prior to the issuance by DBI of the first site or building permit for a non-residential~~  
11 ~~development project or a non-residential component of a mixed use project within the Project Area, the~~  
12 ~~sponsor of any project containing non-residential space subject to the Balboa Park Impact Fee shall~~  
13 ~~pay to the Treasurer \$1.50 per gross square foot.~~

14 (d) ~~— Upon request of the sponsor and upon payment of the Balboa Park Impact Fee in full to~~  
15 ~~the Treasurer, the execution of a Waiver Agreement or In-Kind agreement approved as described~~  
16 ~~herein, the Treasurer shall issue a certification that the obligations of this Section of the Planning Code~~  
17 ~~have been met. The sponsor shall present such certification to the Planning Department and DBI prior~~  
18 ~~to the issuance by DBI of the first site or building permit for the development project. DBI shall not~~  
19 ~~issue the site or building permit without the Treasurer's certification that the fees required by this~~  
20 ~~Section have been paid or otherwise satisfied. Any failure of the Treasurer, DBI, or the Planning~~  
21 ~~Department to give notice of requirements under this Section shall not relieve a sponsor from~~  
22 ~~compliance with this Section. Where DBI inadvertently issues a site or building permit without payment~~  
23 ~~of the fee. Planning and DBI shall not issue any further permits or a certificate of occupancy for the~~  
24 ~~project without certification of fee payment from the Treasurer. The procedure set forth in this~~  
25



1 ~~Subsection is not intended to preclude enforcement of the provisions of this Section under any other~~  
2 ~~Section of this Code, or other authority under the laws of the City or State.~~

3 (e) — ~~Fee Adjustments. In conjunction with the five-year Monitoring Program described in~~  
4 ~~Administrative Code Chapter 10E, the City may review the amount of the Balboa Park Impact Fee, and~~  
5 ~~consider whether an adjustment in fees is warranted according to a change in construction costs~~  
6 ~~according to changes published in the Construction Cost Index published by the Engineering News~~  
7 ~~Record or according to another similar cost index. The City may adjust fees based on changes in~~  
8 ~~estimated costs of the underlying improvements to be funded through the Balboa Park Impact Fee as~~  
9 ~~listed in the Balboa Park Community Improvements Program. Revision of the fee should be done in~~  
10 ~~coordination with revision to other like fees whenever possible. The Planning Department shall provide~~  
11 ~~notice of any fee adjustment including the formula used to calculate the adjustment on its website and~~  
12 ~~to any interested party who has requested such notice at least 30 days prior to the adjustment taking~~  
13 ~~effect.~~

14 (c) (f) Option for In-Kind Provision of Community Improvements and Fee Credits  
15 ~~Public Benefits.~~ The ~~Planning~~ Commission may reduce the Balboa Park Community  
16 Improvements Impact Fee ~~owed described above~~ for specific development projects proposals in  
17 cases where the ~~Planning~~-Director has recommended approval ~~recommends such an In-kind~~  
18 ~~provision,~~ and the project sponsor has entered into an In-Kind Improvements Agreement with  
19 the City. In-kind improvements may be accepted if they are ~~recommended only where said~~  
20 ~~improvements have been~~ prioritized in the Plan, ~~where they~~ meet ~~an~~ identified community needs  
21 as analyzed in the Balboa Park Community Improvements Program, and serve as a ~~where they~~  
22 substitute for improvements funded to be provided by impact fee revenue such as street  
23 improvements, transit improvements, and community facilities. Open space or streetscape  
24 improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible as  
25 in-kind improvements. No proposal for In-kind improvements shall be accepted that does not

1 ~~conform if it is not recommended by the Planning Director according~~ to the criteria above. Project  
2 sponsors that pursue ~~an~~ In-kind ~~i~~Improvements ~~s~~ Agreements with the City will be charged billed  
3 time and materials for any additional administrative costs that the Department or any other City  
4 agency incurs in processing the request.

5 (1) The Balboa Park Community Impact Fee may be reduced by the total dollar value of  
6 the community improvements provided through the an In-kind Improvements aAgreement  
7 recommended by the Director and approved by the Commission shall be equivalent to the portion of the  
8 Balboa Park Impact Fee that is waived. For the purposes of calculating the total value, the project  
9 sponsor shall provide the ~~Planning~~ Department with a cost estimate for the proposed in-kind  
10 improvement(s) from two independent sources or, if relevant, real estate appraisers. If the City  
11 has completed a detailed site-specific cost estimate for a planned improvement this may  
12 serve as one of the cost estimates provided it is indexed to current cost of construction. Based  
13 on these estimates, the ~~Planning~~ Director shall determine ~~their~~ the appropriate value of the in-  
14 kind improvements and the ~~Planning~~ Commission shall may reduce the Balboa Park Community  
15 Improvements Impact Fee otherwise due by an equal amount assessed to that project proportionally.  
16 ~~Open space or streetscape improvements proposed to satisfy the usable open space requirements of~~  
17 ~~Section 135 are not eligible for credit toward the contribution as In-kind improvements.~~ No credit  
18 ~~toward the contribution may~~ shall be made for land value unless ownership of the land is  
19 transferred to the City or a permanent public easement is granted, the acceptance of which is  
20 at the sole discretion of the City.

21 (2) The All In-Kind Improvements aAgreements shall require mandate a covenant of the  
22 project sponsor to reimburse all City agencies for their administrative and staff costs in  
23 negotiating, drafting, and monitoring compliance with the In-Kind Improvements aAgreement.  
24 The City also shall require the project sponsor to provide a letter of credit or other instrument,  
25

1 acceptable in form and substance to the ~~Planning~~ Department and the City Attorney, to secure  
2 the City's right to receive improvements as described above.

3 ~~(g) — Waiver or Reduction.~~

4 ~~(1) — Waiver or Reduction Based on Hardship or Absence of Reasonable Relationship.~~

5 ~~(A) — A project applicant of any project subject to the requirements in this Section may appeal~~  
6 ~~to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the~~  
7 ~~absence of any reasonable relationship or nexus between the impact of development and the amount of~~  
8 ~~the fee charged or for the reasons set forth in subsection (3) below, a project applicant may request a~~  
9 ~~waiver from the Board of Supervisors.~~

10 ~~(B) — Any appeal of waiver requests under this clause shall be made in writing and filed with~~  
11 ~~the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid~~  
12 ~~to the Treasurer the fee as required in Section 331.3. The appeal shall set forth in detail the factual and~~  
13 ~~legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider~~  
14 ~~the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the~~  
15 ~~burden of presenting substantial evidence to support the appeal, including comparable technical~~  
16 ~~information to support appellant's position. If a reduction, adjustment, or waiver is granted, any~~  
17 ~~change of use or scope of the project shall invalidate the waiver, adjustment or reduction of the fee. If~~  
18 ~~the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the~~  
19 ~~nature and extent of the reduction, adjustment or waiver to the Treasurer and Planning Department.~~

20 ~~(2) — Waiver or Reduction Based on Duplication of Fees. This Section details waivers and~~  
21 ~~reductions available by right for project sponsors that fulfill the requirements below.~~

22 ~~(A) — A project applicant subject to the requirements of this Section, who has received an~~  
23 ~~approved building permit, conditional use permit, or similar discretionary approval and who submits a~~  
24 ~~new or revised building permit, conditional use permit, or similar discretionary approval for the same~~  
25

1 ~~property shall be granted a reduction, adjustment, or waiver of the requirements of Section 331.3 of the~~  
2 ~~Planning Code with respect to the square footage of construction previously approved.~~

3 ~~(B) — The City shall not assess duplicative fees on new development. In general project~~  
4 ~~sponsors are only eligible for fee waivers under this clause if a contribution to another fee program~~  
5 ~~would result in a duplication of charges for a particular type of community infrastructure. Therefore~~  
6 ~~applicants may receive a waiver for only the portion of the Balboa Park Community Improvements~~  
7 ~~Fund that addresses that infrastructure type. Requirements under Section 135 do not qualify for waiver~~  
8 ~~or reductions. Should future fees pose a duplicative charge, the same methodology shall apply and the~~  
9 ~~Planning Department shall update the schedule of waivers or reductions accordingly.~~

10 ~~(b) The Department or Commission shall impose a condition on the approval of application~~  
11 ~~for a development project subject to Section 422.1 et seq. The project sponsor shall supply all~~  
12 ~~information to the Department or the Commission necessary to make a determination as to the~~  
13 ~~applicability of Section 422.1 et seq. and imposition of the requirements.~~

14 ~~(c) Timing and Payment of Fee. The fee required by this Section is due and payable to the~~  
15 ~~Development Fee Collection Unit at DBI prior to issuance of the first construction document for the~~  
16 ~~development project deferred to prior to issuance of the first certificate of occupancy pursuant to~~  
17 ~~Section 107A.13.3.1 of the San Francisco Building Code.~~

18 SEC. 422.4. IMPOSITION OF COMMUNITY IMPROVEMENTS IMPACT FEE.

19 ~~(a) Determination of Requirements. The Department shall determine the applicability of~~  
20 ~~Section 422.1 et seq. to any development project requiring a building or site permit and, if Section~~  
21 ~~422.1 et seq. is applicable, the amount of Community Improvements Impact Fees required and shall~~  
22 ~~impose these requirements as a condition of approval for issuance of the building or site permit for the~~  
23 ~~proposed development project. The project sponsor shall supply any information necessary to assist the~~  
24 ~~Department in this determination.~~

1           (b) Notice to Development Fee Collection Unit of Requirements. Prior to the issuance of a  
2 building or site permit for a development project subject to the requirements of Section 422.1 et seq.,  
3 the Department shall notify the Development Fee Collection Unit at DBI of its final determination of  
4 the amount of Community Improvements Impact Fees required, including any reductions calculated for  
5 an In-Kind Improvements Agreement, in addition to the other information required by Section 402(b) of  
6 this Article.

7           (c) Development Fee Collection Unit Notice to Department Prior to issuance of the First  
8 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing  
9 or electronically to the Department prior to issuing the first certificate of occupancy for any  
10 development project subject to Section 422.1 et seq. that has elected to fulfill all or part of its  
11 Community Improvements Impact Fee requirement with an In-Kind Improvements Agreement. If the  
12 Department notifies the Unit at such time that the sponsor has not satisfied any of the terms of the In-  
13 Kind Improvements Agreement, the Director of DBI shall deny any and all certificates of occupancy  
14 until the subject project is brought into compliance with the requirements of Section 422.1 et seq.,  
15 either through conformance with the In-Kind Improvements Agreement or payment of the remainder of  
16 the Community Improvements Impact Fees that would otherwise have been required, plus a deferral  
17 surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

18           (d) In the event that the Department or the Commission takes action affecting any  
19 development project subject to Section 422.1 et seq. and such action is subsequently modified,  
20 superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board  
21 of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

22           ~~SEC. 331.4. LIEN PROCEEDINGS. (a) A sponsor's failure to comply with the requirements of~~  
23 ~~Sections 331.3, shall constitute cause for the City to record a lien against the development project in~~  
24 ~~the sum of the fees required under this ordinance. The fee required by Section 331.3 of this ordinance is~~  
25 ~~due and payable to the Treasurer prior to issuance of the first building or site permit for the~~

1 ~~development project unless a Waiver Agreement has been executed. If, for any reason, the fee remains~~  
2 ~~unpaid following issuance of the permit and no Waiver Agreement has been executed, any amount due~~  
3 ~~shall accrue interest at the rate of one and one-half percent per month, or fraction thereof, from the~~  
4 ~~date of issuance of the permit until the date of final payment.~~

5 (b) — ~~If, for any reason, the fee imposed pursuant to this ordinance remains unpaid following~~  
6 ~~issuance of the permit, the Treasurer shall initiate proceedings in accordance with Article XX of~~  
7 ~~Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the fee,~~  
8 ~~including interest, a lien against all parcels used for the development project and shall send all notices~~  
9 ~~required by that Article to the owner of the property as well as the sponsor. The Treasurer shall~~  
10 ~~prepare a 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 contain the~~  
12 ~~sponsor's name, a description of the sponsor's development project, a description of the parcels of real~~  
13 ~~property to be encumbered as set forth in the Assessor's Map Books for the current year a description~~  
14 ~~of the alleged violation of this ordinance, and shall fix a time, date, and place for hearing. The~~  
15 ~~Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the parcels of~~  
16 ~~real property subject to lien. Except for the release of lien recording fees authorized by Administrative~~  
17 ~~Code Section 10.237, all sums collected by the Tax Collector pursuant to this ordinance shall be held in~~  
18 ~~trust by the Treasurer and deposited in the Balboa Park Community Improvements Fund established in~~  
19 ~~Section 331.6.~~

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

1            ~~SEC. 331.5. BALBOA PARK IMPACT FEE REFUND WHEN BUILDING PERMIT IS~~  
2 ~~MODIFIED OR EXPIRES PRIOR TO COMPLETION OF WORK AND COMMENCEMENT OF~~  
3 ~~OCCUPANCY.~~

4            ~~In the event a building permit is modified to expand or reduce project size, the obligation to~~  
5 ~~comply with this ordinance shall be modified accordingly. In the event a building expires prior to~~  
6 ~~completion of the work on and commencement of occupancy of a residential or non-residential~~  
7 ~~development project so that it will be necessary to obtain a new permit to carry out any development,~~  
8 ~~the obligation to comply with this ordinance shall be cancelled and any Balboa Park Impact Fee~~  
9 ~~previously paid to the Treasurer shall be refunded. If and when the sponsor applies for a new permit,~~  
10 ~~the procedures set forth in this ordinance regarding payment of the Balboa Park Impact Fee shall be~~  
11 ~~followed.~~

12            SEC. ~~422.5~~ 331.6. BALBOA PARK COMMUNITY IMPROVEMENTS FUND.

13            (a)     There is hereby established a separate fund set aside for a special purpose  
14 entitled the Balboa Park Community Improvements Fund ("Fund"). All monies collected by the  
15 ~~Development Fee Collection Unit at DBI the Treasurer~~ pursuant to Section ~~422.3~~ 331.3 shall be  
16 deposited in a special fund maintained by the Controller. The receipts in the Fund to be used  
17 solely to fund community improvements subject to the conditions of this Section.

18            (b)     Expenditures from the Fund shall be recommended by the Planning  
19 Commission and administered by the Board of Supervisors.

20            (1)     All monies deposited in the Fund shall be used to design, engineer, acquire, and  
21 develop and improve streets, transit, parks, plazas and open space, and community facilities  
22 and services as defined in the Balboa Park Community Improvements Program with the Plan  
23 Area. Funds may be used for childcare facilities that are not publicly owned or "publicly-  
24 accessible". Monies from the Fund may be used by the ~~Planning~~ Commission to commission  
25 economic analyses for the purpose of revising the fee pursuant to Section ~~422.3~~ 331.3 above.

1 (2) Funds may be used for administration and accounting of fund assets and for  
2 fees related to legal challenges related to such fees. Administration of this fund includes time  
3 and materials associated with reporting requirements and maintenance of the fund. All interest  
4 earned on this account shall be credited to the Balboa Park Community Improvements Fund.

5 (c) Funds shall be deposited into specific accounts according to the improvement  
6 type for which they were collected. Funds from a specific account may be assigned to a  
7 different improvement type, provided said account or fund is reimbursed over a five-year  
8 period of fee collection. Funds shall be allocated to accounts by improvement type as  
9 described below in Table ~~422.1 331.1~~ and as supported by the Balboa Park Community  
10 Improvements Program Nexus Study, San Francisco Planning Department. Case No.  
11 2004.1059U, monitored according to the Balboa Park Monitoring Program described in  
12 Administrative Code Chapter 10.

13 TABLE ~~422.1 331.1~~  
14 BREAKDOWN OF BALBOA PARK COMMUNITY IMPROVEMENTS FEE/FUND BY  
15 IMPROVEMENT TYPE

16 Improvement Type	%Fee Allocation
17 Streets	38%
18 Transit	13%
19 Parks, Plazas, Open Space	30%
20 Community facilities and services/Other	19%

21  
22 (d) With full participation by the ~~Planning~~ Department and related implementing  
23 agencies, the Controller's Office shall file a report with the Board of Supervisors beginning  
24 180 days after the last day of the fiscal year of the effective date of Section ~~422.1 et seq. this~~  
25 ~~ordinance~~ that shall include the following elements: (1) a description of the type of fee in each



1 account or fund; (2) beginning and ending balance of the accounts or funds including any  
2 bond funds held by an outside trustee; (3) amount of fees collected and interest earned; (4)  
3 identification of each public improvement on which fees or bond funds were expended and  
4 amount of each expenditure; (5) an identification of the approximate date by which the  
5 construction of public improvements will commence; (6) a description of any inter-fund  
6 transfer or loan and the public improvement on which the transferred funds will be expended;  
7 and (7) amount of refunds made and any allocations of unexpended fees that are not  
8 refunded.

9 ~~(e) — Approximately every fifth fiscal year following, to be coordinated with other planning~~  
10 ~~efforts monitoring activity, the first deposit into the account the following account reporting shall be~~  
11 ~~made by the Controller's office in coordination with the Planning Department: (1) purpose to which the~~  
12 ~~fee is to be put; (2) demonstrate a reasonable relationship between the fee and the purpose for which it~~  
13 ~~is charged; (3) identify all sources and amounts of funding anticipated to complete financing in~~  
14 ~~incomplete improvements identified in this ordinance and subsequent reporting; and (4) designate the~~  
15 ~~approximate dates on which the sources and amounts of funding is expected to be deposited into the~~  
16 ~~appropriate account or fund. The reporting requirements detailed in this Section refer to the current~~  
17 ~~requirements under State law, Government Code 66000 and are detailed here to insure that this fund~~  
18 ~~fulfills all legal obligations as detailed by the State. Any applicable amendments to State law.~~  
19 ~~Government Code 66000, automatically apply to the reporting requirements of this ordinance and the~~  
20 ~~ordinance should be amended accordingly.~~

21 ~~(e) (f)~~ A public hearing shall be held by the Recreation and Parks Commission~~s~~ to  
22 elicit public comment on proposals for the acquisition of property using monies in the Fund  
23 that will ultimately be maintained by the Department of Recreation and Parks. Notice of public  
24 hearings shall be published in an official newspaper at least 20 days prior to the date of the  
25 hearing, which notice shall set forth the time, place, and purpose of the hearing. The Parks

1 Commission~~s~~ may vote to recommend to the Board of Supervisors that it appropriate money  
2 from the Fund for acquisition and development of property acquired for park use.

3 ~~(f)~~ ~~(g)~~ The ~~Planning~~ Commission shall work with other City agencies and commissions,  
4 specifically the Department of Recreation and Parks, ~~DPW Department of Public Works~~ and  
5 ~~MTA the Municipal Transportation Authority~~ to develop agreements related to the administration  
6 of the improvements to existing public facilities and development of new public facilities within  
7 public rights-of-way or on any acquired public property using such monies as have been  
8 allocated for that purpose at a hearing of the Board of Supervisors.

9 ~~(g)~~ ~~(h)~~ The Planning Commission, based on findings from the Inter-Agency Plan  
10 Implementation Committee (IPIC), shall make recommendations to the Board regarding  
11 allocation of funds.

12 SEC. ~~423. 327.~~ EASTERN NEIGHBORHOODS IMPACT FEES AND PUBLIC  
13 BENEFIT~~s~~ FUND.

14 Sections ~~423.1 327.1 through to 423.5 327.6~~ set forth the requirements and procedures  
15 for the Eastern Neighborhoods Impact Fee and Public Benefit~~s~~ Fund. The effective date of these  
16 requirements shall be either December 19, 2008, which is the date that these requirements originally  
17 became effective, or the date a subsequent modification, if any, became effective.

18 SEC. ~~423.1. 327.1.~~ FINDINGS.

19 ~~A. (a)~~ New Housing and Other Land Uses. San Francisco is experiencing a severe  
20 shortage of housing available to people at all income levels. In addition, San Francisco has an  
21 ongoing affordable housing crisis. Many future San Francisco workers will be earning below  
22 80% of the area's median income, and even those earning moderate or middle incomes,  
23 above the City's median, are likely to need assistance to continue to live in San Francisco. In  
24 2007, the median income for a family of four in the city was about \$86,000. Yet median home  
25 prices suggest that nearly twice that income is needed to be able to a dwelling suitable for a

1 family that size. Only an estimated 10% of households in the city can afford a median-priced  
2 home.

3 The Association of Bay Area Governments' (ABAG) Regional Housing Needs  
4 Determination (RHND) forecasts that San Francisco must produce over 31,000 new units in  
5 the next five years, or over 6,000 new units of housing annually, to meet projected needs. At  
6 least 60%, or over 18,000, of these new units should be available to households of very low,  
7 low, and moderate incomes. With land in short supply in the City, it is increasingly clear that  
8 the City's formerly industrial areas offer a critical source of land where this great need for  
9 housing, particularly affordable housing, can be partially addressed.

10 San Francisco's Housing Element establishes the Eastern Neighborhoods as a target  
11 area for development of new housing to meet San Francisco's identified housing targets. The  
12 release of some of the area's formerly industrial lands, no longer needed to meet current  
13 industrial or PDR needs, offer an opportunity to achieve higher affordability, and meet a  
14 greater range of need. The Mission, Showplace Square - Potrero Hill, East SoMa and Central  
15 Waterfront Area Plans of the General Plan (Eastern Neighborhoods Plans) thereby call for  
16 creation of new zoning intended specifically to meet San Francisco's housing needs, through  
17 higher affordability requirements and through greater flexibility in the way those requirements  
18 can be met, as described in Section ~~419~~ 419. To support this new housing, other land uses,  
19 including PDR businesses, retail, office and other workplace uses will also grow in the Eastern  
20 Neighborhoods.

21 B. (b) Need for Public Improvements to Accompany New Uses. The amendments to  
22 the General Plan, Planning Code, and Zoning Maps that correspond to Section 423.1 et seq.  
23 ~~this ordinance~~ will permit an increased amount of new housing and other uses, as noted  
24 above. The Planning Department anticipates an increase of at least 7,365 new housing units  
25 within the next 20 years, and over 13,000 new jobs, as estimated under Option B of the

1 Eastern Neighborhoods *Draft* Environmental Impact Report. This new development will have  
2 an extraordinary impact on the Plan Area's already deficient neighborhood infrastructure. New  
3 development will generate needs for a significant amount of public open space and  
4 recreational facilities; transit and transportation, including streetscape and public realm  
5 improvements; community facilities and services, including library materials and child care;  
6 and other amenities, as described in the Eastern Neighborhoods Public Benefits Program, on  
7 file with the Clerk of the Board in File No. 081155.

8 The Eastern Neighborhoods Area Plans addresses existing deficiencies and new  
9 impacts, through a comprehensive package of public benefits described in the Eastern  
10 Neighborhoods Public Benefits Program. This Program will enable the City and County of San  
11 Francisco to provide necessary public infrastructure to new residents while increasing  
12 neighborhood livability and investment in the district.

13 C. (e) Requirements for New Development To Contribute Towards Plan Objectives. A  
14 key policy goal of the Eastern Neighborhoods Plans is to provide a significant amount of new  
15 housing affordable to low, moderate and middle income families and individuals, along with  
16 "complete neighborhoods" that provide appropriate amenities for these new residents. The  
17 Plans obligate all new development within the Eastern Neighborhoods to contribute towards  
18 these goals, by providing a contribution towards affordable housing needs and by paying an  
19 Eastern Neighborhoods Impact Fee.

20 However, due to the high cost of land within the City, it has been determined that the  
21 imposition of requirements and fees based on the full impact of new development would be  
22 overly burdensome to new development, and hinder the City's policy goal of providing a  
23 significant amount of new housing. Therefore, fee rates have been set at a level that will not  
24 hinder this policy goal overall. The Plans structure requirements and fees by tiers to ensure  
25

1 feasibility. ~~The following fee tiers are created in the Eastern Neighborhoods Plan Areas, and included~~  
2 ~~as a notation on each parcel in the Planning Department/s Parcel Information System:~~

3 ~~1.—Tier 1. Sites which do not receive zoning changes that increase heights, as compared to~~  
4 ~~allowable height prior to the rezoning (May 2008), all 100% affordable housing projects, and all~~  
5 ~~housing projects within the Urban Mixed Use (UMU) district.~~

6 ~~2.—Tier 2. All other sites which receive zoning changes that increase heights by one to two~~  
7 ~~stories.~~

8 ~~3.—Tier 3. All other sites which receive zoning changes that increase heights by three or more~~  
9 ~~stories and in the Mixed Use Residential District.~~

10 D. (d) Programmed Improvements. General public improvements and amenities  
11 needed to meet the needs of both existing residents, as well as those needs generated by  
12 new development, have been identified through the community planning processes of the  
13 Area Plans, based on the standards-based analysis contained in the Eastern Neighborhoods  
14 Needs Assessment, San Francisco Planning Department, Case No. 2004.0160uu on file with  
15 the Clerk of the Board in File No. 081155, and on community input during the Plan adoption  
16 process. The Planning Department developed generalized cost estimates, based on similar  
17 project types implemented by the City in the relevant time period, to provide reasonable  
18 approximates for the eventual cost of providing necessary Public Benefits in the Plan Areas  
19 (information on these cost estimates is located in the Eastern Neighborhoods Public Benefits  
20 Program Document). However specific public improvements are still under development and  
21 will be further clarified through interdepartmental efforts with input from the Interagency Plan  
22 Implementation Committee, the Citizens Advisory Committee, and other stakeholders.  
23 Specific project identification, design work, engineering, and environmental review will still be  
24 required and may alter the nature of the improvements, as well as the sum total of the cost for  
25 these improvements.

1            ~~E. (e)~~ Eastern Neighborhoods Impact Fee. Development impact fees are an effective  
2 approach to mitigate impacts associated with growth in population. The proposed ~~Eastern~~  
3 ~~Neighborhoods~~ Eastern Neighborhoods Impact Fee would be dedicated to infrastructure  
4 improvements in the Plan Area, directing benefits of the fund clearly to those who pay into the  
5 fund, by providing necessary infrastructure improvements and housing needed to serve new  
6 development. The net increases in individual property values in these areas due to the  
7 enhanced neighborhood amenities financed with the proceeds of the fee are expected to  
8 exceed the payments of fees by project sponsors.

9            The fee rate has been calculated by the Planning Department based on accepted  
10 professional methods for the calculation of such fees, and described fully in the Eastern  
11 Neighborhoods Nexus Studies, San Francisco Planning Department, Case No. 2004.0160uu  
12 on file with the Clerk of the Board in File No. 081155. The Eastern Neighborhoods Public  
13 Benefits Program Document contains a full discussion of impact fee ~~rationale~~ *rationable*.

14            The proposed fee would cover less than the full nexus as calculated by the Eastern  
15 Neighborhoods Nexus Studies. The proposed fees only cover impacts caused by new  
16 development and are not intended to remedy existing deficiencies. Those costs will be paid  
17 for by public, community, and other private sources as described in the Eastern  
18 Neighborhoods Public Benefits Program. Residential and non-residential impact fees are only  
19 one of many revenue sources necessary to create the "complete neighborhoods" that will  
20 provide appropriate amenities for residents of the Eastern Neighborhoods.

21            SEC. ~~423.2. 327.2.~~ DEFINITIONS. *(a) In addition to the definitions set forth in Section 401*  
22 *of this Article, ~~the~~ the following definitions shall govern interpretation of Section 423.1 et seq. ~~this~~*  
23 *ordinance:*

24            ~~(a) — Definitions from section 318.2 shall apply unless otherwise noted in this Section.~~

1           (b) — "~~Designated affordable housing zones~~" for the purposes of this section, shall mean the  
2 ~~Mission NCT defined in Section 736 and the Mixed Use Residential District defined in Section 841.~~

3           (c) — "~~Community facilities~~" shall mean all uses as defined under Section 209.4(a) and  
4 ~~209.3(d) of this Code.~~

5           (d) — "~~Eastern Neighborhoods Impact Fee~~" shall refer to the fee collected by the City to  
6 ~~mitigate impacts of new development as described in Findings, above.~~

7           (e) — "~~Eastern Neighborhoods Public Benefits Fund~~" shall refer to the fund into which all fee  
8 ~~revenue collected by the City from the Eastern Neighborhoods Impact Fee.~~

9           (f) — "~~In-kind Improvements Agreement.~~" shall mean an agreement acceptable in form and  
10 ~~substance to the City Attorney and the Planning Director between a project sponsor and the Planning~~  
11 ~~Department subject to the approval of the Planning Commission in its sole discretion to provide a~~  
12 ~~specific set of public benefits, at a specific phase of construction, in lieu of monetary contribution to the~~  
13 ~~Eastern Neighborhoods Public Benefit Fund.~~

14           (g) — "~~Net addition of gross square feet of non-residential space.~~" shall mean ~~g~~Gross floor  
15 ~~area as defined in Planning Code Section 102.9 to be occupied by, or primarily serving, any non-~~  
16 ~~residential use, less the gross floor area in any structure demolished or rehabilitated as part of the~~  
17 ~~proposed development project space used primarily and continuously for the same non-residential use~~  
18 ~~within the same economic activity category; and not accessory to any use other than that same non-~~  
19 ~~residential use for five years prior to Planning Commission approval of the development project~~  
20 ~~subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

21           (h) — "~~Net addition of gross square feet of residential space~~" shall mean gross floor area as  
22 ~~defined in Planning Code Section 102.9 to be occupied by, or primarily serving, residential use, less~~  
23 ~~the gross floor area in any structure demolished or rehabilitated as part of the proposed residential~~  
24 ~~development project space used primarily and continuously for residential use and not accessory to any~~  
25 ~~use other than residential use for five years prior to Planning Commission approval of the development~~

1 ~~project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is~~  
2 ~~shorter.~~

3 (i) ~~—"Non-residential use" shall mean any structure or portion thereof intended for~~  
4 ~~occupancy by retail, office, commercial or other nonresidential uses defined in Section 217, 218, 219~~  
5 ~~and 221, and also in 209.3 and 209.8 of the Planning Code; including uses referenced in the Eastern~~  
6 ~~Neighborhoods Nexus Study. For the purposes of this Section it shall not include industrial uses,~~  
7 ~~including those contained in Sections 220, 222, 223, 224, 225, and 226 of the Planning Code, or uses~~  
8 ~~that qualify as an accessory use, as defined and regulated in Sections 204 through 204.5. Non-~~  
9 ~~residential uses shall include the economic activity categories of Cultural/Institution/Education;~~  
10 ~~Management, Information & Professional Service; Medical & Health Service; Retail/Entertainment;~~  
11 ~~and Visitor Services.~~

12 (j) ~~—"Non-residential development project" shall mean any new construction, addition,~~  
13 ~~extension, conversion or enlargement, or combination thereof, of an existing structure which includes~~  
14 ~~any occupied floor area of non-residential use; provided, however, that for projects that solely~~  
15 ~~comprise an addition to an existing structure which would add occupied floor area in an amount less~~  
16 ~~than 20 percent of the occupied floor area of the existing structure, the provisions of this Section shall~~  
17 ~~only apply to the new occupied square footage.~~

18 (k) ~~—"Non-residential Space Subject to the Eastern Neighborhoods Impact Fee means each~~  
19 ~~net addition of net square feet within the Project Area which contributes to a 20 percent increase in~~  
20 ~~non-residential capacity of an existing structure.~~

21 (l) ~~—"Project Area" shall mean the Eastern Neighborhoods Plan Area in Map 1 (Land Use~~  
22 ~~Plan) of the Eastern Neighborhoods Area Plan of the San Francisco General Plan.~~

23 (m) ~~—"Residential" shall mean any type of use containing dwellings as defined in Section~~  
24 ~~209.1, 790.88, and 890.88 of the Planning Code as relevant for the subject zoning district or containing~~  
25 ~~group housing as defined in Section 209.2(a)-(c) of the Planning Code.~~



1           ~~(n) — "Residential Space Subject to the Eastern Neighborhoods Impact Fee" means each net~~  
2 ~~addition of net square feet within the Project Area which results in a net new residential unit.~~

3           ~~(1) — "Tier 1." Sites which do not receive zoning changes that increase heights, as compared~~  
4 ~~to allowable height prior to the rezoning (May 2008), all 100% affordable housing projects, and all~~  
5 ~~housing projects within the Urban Mixed Use (UMU) district.~~

6           ~~(2) — "Tier 2." Sites which receive zoning changes that increase heights by one to two stories.~~

7           ~~(3) — "Tier 3." Sites which receive zoning changes that increase heights by three or more~~  
8 ~~stories and in the Mixed Use Residential District.~~

9           ~~(o) — "Waiver Agreement" means an agreement acceptable in form and substance to the~~  
10 ~~Planning Department and the City Attorney, under which the City agrees to waive all or a portion of~~  
11 ~~the Eastern Neighborhoods Impact Fee, provided the sponsor has demonstrated a hardship in~~  
12 ~~achieving those objectives as well as all the requirements of the Plan. Such a waiver may also be~~  
13 ~~granted as a part of a signed covenant to make a good faith effort to secure the formation of a~~  
14 ~~Community Facilities (Mello-Roos) District.~~

15           SEC. ~~423.3.~~ 327.3. APPLICATION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE  
16 IMPACT FEE.

17           ~~(a) — Application. Section 423.1 et seq. shall apply to any development project located in the~~  
18 ~~Eastern Neighborhoods Public Benefits Program Area, which Project Area. The Eastern~~  
19 ~~Neighborhoods Public Benefits Fund is hereby established. It shall be implemented in part through~~  
20 ~~district-specific Eastern Neighborhoods Impact Fee which applies to the Project Area and includes~~  
21 properties identified as part of the Eastern Neighborhoods Plan Areas in Map 1 (Land Use  
22 Plan) of the San Francisco General Plan.

23           ~~(b) — Amount of Fee.~~

24           ~~(1) — Residential Uses. The Fees set forth in Table 423.3 below shall be charged on net~~  
25 additions of gross square feet which result in a net new residential unit, contribute to a 20

1 percent increase of non-residential space in an existing structure, or create non-residential  
2 space in a new structure. ~~Fees shall be assessed on residential use, and~~

3 (2) Non-Residential Uses. ~~The fees set forth in Table 423.3 below shall be charged~~ on non-  
4 residential use within each use category of Cultural/Institution/Education; Management,  
5 Information & Professional Service; Medical & Health Service; Retail/Entertainment; and  
6 Visitor Services; with no substitutions across uses. Fees shall not be required for uses  
7 contained in Sections 220, 222, 223, 224, 225, and 226 of ~~the Planning~~ this Code.

8 (3) Mixed Use Projects. Fees shall be assessed on mixed use projects according to  
9 the gross square feet of each residential and non-residential use in the project.

10 ~~(b) — Prior to the issuance by the Department of Building Inspection (DBI) of the first site or~~  
11 ~~building permit for a residential development project, or residential component of a mixed use project~~  
12 ~~within the Project Area, the sponsor of any project containing residential space subject to the Eastern~~  
13 ~~Neighborhoods Impact Fee shall pay to the Treasurer according to the schedule in Table 327.3.~~

14 ~~(c) — Prior to the issuance by DBI of the first site or building permit for a non-residential~~  
15 ~~development project, or non-residential component of a mixed use project within the Project Area, the~~  
16 ~~sponsor of any project containing non-residential space subject to the Eastern Neighborhoods Impact~~  
17 ~~Fee shall pay to the Treasurer according to the schedule in Table 327.3.~~

18 TABLE 423.3 ~~327.3~~

19 FEE SCHEDULE FOR EASTERN NEIGHBORHOODS PLAN AREAS

20

Tier	Residential	Non-residential*
1	\$8/gsf	\$6/gsf
2	\$12/gsf	\$10/gsf
3	\$16/gsf	\$14/gsf

1           (d) — Upon request of the sponsor and upon payment of the Eastern Neighborhoods Impact  
2 Fee in full to the Treasurer, the execution of a Waiver Agreement or In-Kind agreement approved as  
3 described herein, the Treasurer shall issue a certification that the obligations of this section of the  
4 Planning Code have been met. The sponsor shall present such certification to the Planning Department  
5 and DBI prior to the issuance by DBI of the first site or building permit for the development project.  
6 DBI shall not issue the site or building permit without the Treasurer's certification that the fees  
7 required by this Section have been paid or otherwise satisfied. Any failure of the Treasurer, DBI, or the  
8 Planning Department to give notice of requirements under this Section shall not relieve a sponsor from  
9 compliance with this Section. Where DBI inadvertently issues a site or building permit without payment  
10 of the fee, Planning and DBI shall not issue any further permits or a certificate of occupancy for the  
11 project without certification from the Treasurer. The procedure set forth in this Subsection is not  
12 intended to preclude enforcement of the provisions of this Section under any other section of this Code,  
13 or other authority under the laws of the City or State of California.

14           (e) — Fee Adjustments. In conjunction with the five-year Monitoring Program required by the  
15 Administrative Code Section (note: section number to be determined), the City may review the amount  
16 of the Eastern Neighborhoods Impact Fee, should such an increase in fees be warranted according to  
17 an increase in construction costs according to changes published in the Construction Cost Index  
18 published by the Engineering News Record, or according to another similar cost index should there be  
19 one more appropriate. The City may also adjust fees based on changes in estimated costs of the  
20 underlying improvements to be funded through the Eastern Neighborhoods Impact Fee as listed in the  
21 Eastern Neighborhoods Program. Revision of the fee should be done in coordination with revision to  
22 other like fees whenever possible. The Planning Department shall provide notice of any fee adjustment  
23 including the formula used to calculate the adjustment on its website and to any interested party who  
24 has requested such notice at least 30 days prior to the adjustment taking effect.

1           (c) (f) Option for In-Kind Provision of Public Benefits and Fee Credits. The *Planning*  
2 Commission may reduce the Eastern Neighborhoods Infrastructure Impact Fee owed described  
3 in (b) above for specific development projects proposals in cases where the *Planning* Director has  
4 recommended approval such an In-kind provision, and the project sponsor has entered into an  
5 In-Kind Improvements Agreement with the City. In-kind improvements may be accepted if they are  
6 only be recommended where said improvements have been prioritized in the pPlan, where they meet  
7 an identified community needs as analyzed in the Eastern Neighborhoods Needs Assessment,  
8 and serve as a where they substitute for improvements funded be provided by impact fee revenue  
9 such as public open spaces and recreational facilities, transportation and transit service,  
10 streetscapes or the public realm, and community facility space. Open space or streetscape  
11 improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible as  
12 in-kind improvements. No proposal for In-kind improvements shall be accepted that does not  
13 conform if it is not recommended by the Planning Director according to the criteria above. Project  
14 sponsors that pursue an iIn-kind Improvement Agreements with the City waiver will be charged are  
15 responsible time and materials for any all additional administrative costs that the Department or  
16 any other City agency incurs in processing the request.

17           (1) The Eastern Neighborhoods Infrastructure Impact Fee may be reduced by the total  
18 dollar value of the community improvements provided through the an In-kind Improvements  
19 an Agreement recommended by the Director and approved by the Commission shall be equivalent to the  
20 portion of the Eastern Neighborhoods Impact Fee that is waived. For the purposes of calculating  
21 the total value, the project sponsor shall provide the *Planning* Department with a cost estimate  
22 for the proposed in-kind Public Benefits from two independent sources or, if relevant, real  
23 estate appraisers. If the City has completed a detailed site-specific cost estimate for a planned  
24 improvement this may serve as one of the cost estimates provided it is indexed to current cost  
25 of construction. Based on these estimates, the *Planning* Director shall determine their the

1 appropriate value of the in-kind improvements and the *Planning* Commission may reduce the  
2 Eastern Neighborhoods Infrastructure Impact Fee otherwise due by an equal amount assessed to  
3 that project proportionally. Open space or streetscape improvements proposed to satisfy the usable  
4 open space requirements of Section 135 are not eligible for credit toward the contribution as In-Kind  
5 improvements. No credit toward the contribution may shall be made for land value unless  
6 ownership of the land is transferred to the City or a permanent public easement is granted, the  
7 acceptance of which is at the sole discretion of the City.

8 (2) ~~The All In-Kind Improvements Agreements shall require also mandate a covenant of~~  
9 ~~the project sponsor to reimburse all city agencies for their administrative and staff costs in~~  
10 ~~negotiating, drafting, and monitoring compliance with the In-Kind Improvements Agreement.~~  
11 ~~The City also shall require the project sponsor to provide a letter of credit or other instrument,~~  
12 ~~acceptable in form and substance to the Planning Department and the City Attorney, to~~  
13 ~~secure the City's right to receive improvements as described above.~~

14 ~~(d) (g) Waiver or Reduction of Fees. The provisions for (1) Waiver or Reduction Based on~~  
15 ~~Hardship or Absence of Reasonable Relationship. waiver or reduction of fees are set forth in Section~~  
16 ~~406 of this Article. In addition to those provisions~~

17 ~~(A) — A project applicant of any project subject to the requirements in this Section may appeal~~  
18 ~~to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the~~  
19 ~~absence of any reasonable relationship or nexus between the impact of development and the amount of~~  
20 ~~the fee charged or for the reasons set forth in subsection (2) below, a project applicant may request a~~  
21 ~~waiver from the Board of Supervisors.~~

22 ~~(B) — Any appeal of waiver requests under this clause shall be made in writing and filed with~~  
23 ~~the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid~~  
24 ~~to the Treasurer the fee as required in Section 327.3(b). The appeal shall set forth in detail the factual~~  
25 ~~and legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall~~

1 ~~consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear~~  
2 ~~the burden of presenting substantial evidence to support the appeal, including comparable technical~~  
3 ~~information to support appellant's position. If a reduction, adjustment, or waiver is granted, any~~  
4 ~~change of use or scope of the project shall invalidate the waiver, adjustment, or reduction of the fee. If~~  
5 ~~the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the~~  
6 ~~nature and extent of the reduction, adjustment or waiver to the Treasurer and Planning Department.~~

7 ~~(2) — Waiver or Reduction Based on Duplication of Fees. This Section details waivers and~~  
8 ~~reductions available by right for project sponsors that fulfill the requirements below.~~

9 ~~(A) — A project applicant subject to the requirements of this Section who has received an~~  
10 ~~approved building permit, conditional use permit or similar discretionary approval and who submits a~~  
11 ~~new or revised building permit, conditional use permit or similar discretionary approval for the same~~  
12 ~~property shall be granted a reduction, adjustment or waiver of the requirements of Section 327 of the~~  
13 ~~Planning Code with respect to the square footage of construction previously approved.~~

14 ~~(B) — The City shall not to assess duplicative fees on new development. In general project~~  
15 ~~sponsors are only eligible for fee waivers under this clause if a contribution to another fee program~~  
16 ~~would result in a duplication of charges for a particular type of community infrastructure. Therefore~~  
17 ~~applicants may only receive a waiver for the portion of the Eastern Neighborhoods Public Benefits~~  
18 ~~Fund that addresses that infrastructure type. Requirements under Section 135 do not qualify for waiver~~  
19 ~~or reductions. Should future fees pose a duplicative charge, the same methodology shall apply and the~~  
20 ~~Planning Department shall update the schedule of waivers or reductions accordingly.~~

21 ~~(i) project sponsors Applicants with a development project located within an~~  
22 ~~applicable San Francisco Redevelopment Project Area may reduce their required contribution~~  
23 ~~to the Eastern Neighborhoods Public Benefits Fund by half of any total sum that they would~~  
24 ~~otherwise be required to pay under this Section, if the sponsor applicant:~~

1 (A) ~~H~~has filed its first application, including an environmental evaluation application  
2 or any other Planning Department or Building Department application before the effective date  
3 of Section 423.1 et seq. this Ordinance and

4 (B) ~~P~~rovides the Zoning Administrator with written evidence, supported in writing by  
5 the San Francisco Redevelopment Agency, that demonstrates the annual tax increment which  
6 could be generated by the proposed project would support a minimum future bonding capacity  
7 equal to \$10,000,000 or greater.

8 SEC. 423.4. IMPOSITION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE IMPACT  
9 FEE.

10 (a) Determination of Requirements. The Department shall determine the applicability of  
11 Section 423.1 et seq. to any development project requiring a building or site permit and, if Section  
12 423.1 et seq. is applicable, the amount of Eastern Neighborhoods Infrastructure Impact Fees required  
13 and shall impose these requirements as a condition of approval for issuance of the building or site  
14 permit for the proposed development project. The project sponsor shall supply any information  
15 necessary to assist the Department in this determination.

16 (b) Notice to Development Fee Collection Unit of Requirements. Prior to the issuance of a  
17 building or site permit for a development project subject to the requirements of Section 423.1 et seq.,  
18 the Department shall notify the Development Fee Collection Unit at DBI of its final determination of  
19 the amount of Eastern Neighborhoods Infrastructure Impact Fees required, including any reductions  
20 calculated for an In-Kind Improvements Agreement, in addition to the other information required by  
21 Section 402(b) of this Article.

22 (c) Development Fee Collection Unit Notice to Department Prior to issuance of the First  
23 Certificate of Occupancy. The Development Fee Collection Unit at DBI shall provide notice in writing  
24 or electronically to the Department prior to issuing the first certificate of occupancy for any  
25 development project subject to Section 422.1 et seq. that has elected to fulfill all or part of its Eastern

1 Neighborhoods Impact Fee requirement with an In-Kind Improvements Agreement. If the Department  
2 notifies the Unit at such time that the sponsor has not satisfied any of the terms of the In-Kind  
3 Improvements Agreement, the Director of DBI shall deny any and all certificates of occupancy until the  
4 subject project is brought into compliance with the requirements of Section 422.1 et seq., either  
5 through conformance with the In-Kind Improvements Agreement or payment of the remainder of the  
6 Eastern Neighborhood Infrastructure Impact Fees that would otherwise have been required, plus a  
7 deferral surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

8 (d) In the event that the Department or the Commission takes action affecting any  
9 development project subject to Section 422.1 et seq. and such action is subsequently modified,  
10 superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board  
11 of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

12 ~~SEC. 331.4. LIEN PROCEEDINGS. (a) A sponsor's failure to comply with the requirements of~~  
13 ~~Sections 327.3, shall constitute cause for the City to record a lien against the development project in~~  
14 ~~the sum of the fees required under this ordinance. The fee required by Section 327.3(b) of this~~  
15 ~~ordinance is due and payable to the Treasurer prior to issuance of the first building or site permit for~~  
16 ~~the development project unless a Waiver Agreement has been executed. If, for any reason, the fee~~  
17 ~~remains unpaid following issuance of the permit and no Waiver Agreement has been executed, any~~  
18 ~~amount due shall accrue interest at the rate of one and one-half percent per month, or fraction thereof,~~  
19 ~~from the date of issuance of the permit until the date of final payment.~~

20 ~~(b) — If, for any reason, the fee imposed pursuant to this ordinance remains unpaid following~~  
21 ~~issuance of the permit, the Treasurer shall initiate proceedings in accordance with Article XX of~~  
22 ~~Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the fee,~~  
23 ~~including interest, a lien against all parcels used for the development project and shall send all notices~~  
24 ~~required by that Article to the owner of the property as well as the sponsor. The Treasurer shall also~~  
25 ~~prepare a preliminary report notifying the sponsor of a hearing to confirm such report by the Board of~~



1 *Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall contain the*  
2 *sponsor's name, a description of the sponsor's development project, a description of the parcels of real*  
3 *property to be encumbered as set forth in the Assessor's Map Books for the current year, a description*  
4 *of the alleged violation of this ordinance, and shall fix a time, date, and place for hearing. The*  
5 *Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the parcels of*  
6 *real property subject to lien. Except for the release of lien recording fees authorized by Administrative*  
7 *Code Section 10.237, all sums collected by the Tax Collector pursuant to this ordinance shall be held in*  
8 *trust by the Treasurer and deposited in the Eastern Neighborhoods Public Benefits Fund established in*  
9 *Section 327.6.*

10 *(c) — Any notice required to be given to a sponsor or owner shall be sufficiently given or*  
11 *served upon the sponsor or owner for all purposes hereunder if personally served upon the sponsor or*  
12 *owner or if deposited, postage prepaid, in a post office letterbox addressed in the name of the sponsor*  
13 *or owner at the official address of the sponsor or owner maintained by the Tax Collector for the*  
14 *mailing of tax bills or, if no such address is available, to the sponsor at the address of the development*  
15 *project, and to the applicant for the site or building permit at the address on the permit application.*

16 ~~SEC. 327.5. EASTERN NEIGHBORHOODS IMPACT FEE REFUND WHEN BUILDING~~  
17 ~~PERMIT IS MODIFIED OR EXPIRES PRIOR TO COMPLETION OF WORK AND~~  
18 ~~COMMENCEMENT OF OCCUPANCY.~~

19 *In the event a building permit is modified to expand or reduce project size, the obligation to*  
20 *comply with this ordinance shall be modified accordingly. In the event a building expires prior to*  
21 *completion of the work on and commencement of occupancy of a residential or non-residential*  
22 *development project so that it will be necessary to obtain a new permit to carry out any development,*  
23 *the obligation to comply with this ordinance shall be cancelled, and any Eastern Neighborhoods*  
24 *Impact Fee previously paid to the Treasurer shall be refunded. If and when the sponsor applies for a*  
25

1 ~~new permit, the procedures set forth in this ordinance regarding payment of the Eastern~~  
2 ~~Neighborhoods Impact Fee shall be followed.~~

3 SEC. ~~423.5. 327.6.~~ THE EASTERN NEIGHBORHOODS PUBLIC BENEFITS FUND.

4 (a) There is hereby established a separate fund set aside for a special purpose  
5 entitled the Eastern Neighborhoods Public Benefits Fund ("Fund"). All monies collected by the  
6 ~~Development Fee Collection Unit at DBI Treasurer~~ pursuant to Section ~~423.3(b) 327.3(b)~~ shall be  
7 deposited in a special fund maintained by the Controller. The receipts in the Fund to be used  
8 solely to fund Public Benefits subject to the conditions of this Section.

9 (b) Expenditures from the Fund shall be recommended by the Planning  
10 Commission, and administered by the Board of Supervisors.

11 (1) All monies deposited in the Fund shall be used to design, engineer, acquire, and  
12 develop and improve public open space and recreational facilities; transit, streetscape and  
13 public realm improvements; and community facilities including child care and library materials,  
14 as defined in the Eastern Neighborhoods Nexus Studies; or housing preservation and  
15 development within the Eastern Neighborhoods Plan Area. Funds may be used for childcare  
16 facilities that are not publicly owned or "publicly-accessible". Funds generated for 'library  
17 resources' should be used for materials in branches that directly service Eastern  
18 Neighborhoods residents. Monies from the Fund may be used by the Planning Commission to  
19 commission economic analyses for the purpose of revising the fee ~~pursuant to Section 327.3(d)~~  
20 ~~above, and/or~~ to complete an updated nexus study to demonstrate the relationship between  
21 development and the need for public facilities if this is deemed necessary.

22 (2) Funds may be used for administration and accounting of fund assets, for  
23 additional studies as detailed in the Eastern Neighborhoods Public Benefits Program  
24 Document, and to defend the Community Stabilization fee against legal challenge, including  
25 the legal costs and attorney's fees incurred in the defense. Administration of this fund includes

1 time and materials associated with reporting requirements, facilitating the Eastern  
2 Neighborhoods Citizens Advisory Committee meetings, and maintenance of the fund. All  
3 interest earned on this account shall be credited to the Eastern Neighborhoods Public  
4 Benefits Fund.

5 (c) Funds shall be deposited into specific accounts according to the improvement  
6 type for which they were collected. Funds from a specific account may be used towards a  
7 different improvement type, provided said account or fund is reimbursed over a five-year  
8 period of fee collection. Funds shall be allocated to accounts by improvement type as  
9 described below:

10 (1) Funds collected from all zoning districts in the Project Area, excluding  
11 Designated Affordable Housing Zones shall be allocated to accounts by improvement type  
12 according to Table 423.6 ~~327.6~~.

13 (2) Funds collected in designated affordable housing zones (Mission NCT and MUR  
14 (as defined in 423.2 (3) ~~327.2(b)~~), shall be allocated to accounts by improvement type as  
15 described in Table 423.6A ~~327.6A~~. The revenue devoted to affordable housing preservation  
16 and development shall be deposited into a specific amount to be held by the Mayor's Office of  
17 Housing.

18 A. All funds collected from projects in the Mission NCT that are earmarked for  
19 affordable housing preservation and development shall be expended on housing programs  
20 and projects within the Mission Area Plan boundaries.

21 B. All funds collected from projects in the MUR that are earmarked for affordable  
22 housing preservation and development shall be expended on housing programs and projects  
23 shall be expended within the boundaries of 5th to 10th Streets/Howard to Harrison Streets.  
24  
25

1 C. Collectively, the first \$10 million in housing fees collected between the two  
 2 Designated Affordable Housing Zones shall be utilized for the acquisition and rehabilitation of  
 3 existing housing.

4 (3) All funds are supported by the Eastern Neighborhoods Nexus Studies, San  
 5 Francisco Planning Department, Case No. 2004.0160, and monitored according to the  
 6 Eastern Neighborhoods Area Plans Monitoring Program required by the Administrative Code  
 7 *Section (note: section number to be determined)* and detailed by separate resolution.

8 TABLE ~~423.6~~ 327.6

9 BREAKDOWN OF EASTERN NEIGHBORHOODS PUBLIC BENEFIT FEE/FUND BY  
 10 IMPROVEMENT TYPE\*

Improvement Type	Residential	Non-residential
Open space and recreational facilities	50%	7%
Transit, streetscape and public realm improvements	42%	90%
Community facilities (child care and library materials)	8%	3%

11 \*Does not apply to Designated Affordable Housing Zones, which are addressed in  
 12 Table ~~423.6A~~ 327.6A.

13 TABLE ~~423.6A~~ 327.6A

14 BREAKDOWN OF EASTERN NEIGHBORHOODS PUBLIC BENEFIT FEE/FUND BY  
 15 IMPROVEMENT TYPE FOR DESIGNATED AFFORDABLE HOUSING ZONES

Improvement Type	Residential	Non-residential

1	Affordable housing preservation and	75%	n/a
2	development		
3	Open space and recreational facilities	13%	7%
4	Transit, streetscape and public realm	10%	90%
5	improvements		
6	Community facilities (child care and	2%	3%
7	library materials)		
8			

9 (d) With full participation by the Planning Department and related implementing  
10 agencies, the Controller's Office shall file a report with the Board of Supervisors beginning  
11 180 days after the last day of the fiscal year of the effective date of *Section 423.1 et seq. this*  
12 *ordinance* that shall include the following elements: (1) a description of the type of fee in each  
13 account or fund; (2) amount of fee collected; (3) beginning and ending balance of the  
14 accounts or funds including any bond funds held by an outside trustee; (4) amount of fees  
15 collected and interest earned; (5) identification of each public improvement on which fees or  
16 bond funds were expended and amount of each expenditure; (6) an identification of the  
17 approximate date by which the construction of public improvements will commence; (7) a  
18 description of any inter-fund transfer or loan and the public improvement on which the  
19 transferred funds will be expended; and (8) amount of refunds made and any allocations of  
20 unexpended fees that are not refunded.

21 ~~(e) — Approximately every fifth fiscal year following the first deposit into the account, as~~  
22 ~~coordinated with other planning efforts monitoring activity, the following account reporting shall be~~  
23 ~~made by the Controller's office in coordination with the Planning Department: (1) purpose to which the~~  
24 ~~fee is to be put; (2) demonstrate a reasonable relationship between the fee and the purpose for which it~~  
25 ~~is charged; (3) identify all sources and amounts of funding anticipated to complete financing in~~

1 ~~incomplete improvements identified in this ordinance and subsequent reporting; and (4) designate the~~  
2 ~~approximate dates on which the sources and amounts of funding is expected to be deposited into the~~  
3 ~~appropriate account or fund. The reporting requirements detailed in this section refer to the current~~  
4 ~~requirements under State law, Government Code 66000, and are detailed here to insure that this fund~~  
5 ~~fulfills all legal obligations as detailed by the State of California. Any applicable amendments to State~~  
6 ~~law, Government Code 66000, automatically apply to the reporting requirements of this ordinance and~~  
7 ~~the ordinance should be amended accordingly.~~

8 (e) (f) A public hearing shall be held by the Recreation and Parks Commissions to  
9 elicit public comment on proposals for the acquisition of property using monies in the Fund  
10 that will ultimately be maintained by the Department of Recreation and Parks. Notice of public  
11 hearings shall be published in an official newspaper at least 20 days prior to the date of the  
12 hearing, which notice shall set forth the time, place, and purpose of the hearing. The Parks  
13 Commissions may vote to recommend to the Board of Supervisors that it appropriate money  
14 from the Fund for acquisition and development of property acquired for park use.

15 (f) (g) The Planning Commission shall work with other City agencies and  
16 commissions, specifically the Department of Recreation and Parks, ~~DPW Department of Public~~  
17 ~~Works~~, and the ~~MTA Municipal Transportation Authority~~, to develop agreements related to the  
18 administration of the improvements to existing public facilities and development of new public  
19 facilities within public rights-of-way or on any acquired public property, using such monies as  
20 have been allocated for that purpose at a hearing of the Board of Supervisors.

21 (g) (h) The Planning Commission, based on findings from the Interagency Planning &  
22 Implementation Committee (IPIC), shall make recommendations to the Board regarding  
23 allocation of funds.

24 (h) (i) Within 60 days of receiving the Eastern Neighborhoods Capital Expenditure  
25 Evaluation Report as specified in Administrative Code Section 10E.7, the Office of the

1 Controller shall assess whether funds collected from the Eastern Neighborhoods Impact Fee  
2 are being effectively utilized for capital projects serving the Eastern Neighborhoods, and  
3 whether such projects are successfully advancing towards implementation, as set forth in the  
4 abovementioned Section. Based on this assessment, the following shall occur:

5 (A) If the Controller determines that the funds have been effectively utilized as set  
6 forth in Section 10E.7 of the Administrative Code, the Controller shall issue an affirmative  
7 finding to the Board of Supervisors and the Planning Commission certifying that the intent of  
8 this aforementioned Section is being met. No further Controller action is necessary for  
9 purposes of this Subsection.

10 (B) If the Controller fails to issue the certification described in Subsection (h) ~~(i)~~(A)  
11 above or if the Controller determines that the fees are not being effectively utilized as set forth  
12 in Administrative Code Section 10E.7 and notifies the Board of Supervisors and Planning  
13 Commission of this determination, then the following shall occur:

14 (i) Any project specified below within the Eastern Neighborhoods Area Plan that  
15 has not already received final and effective approvals from the Planning Department, Zoning  
16 Administrator, and/or the Planning Commission, shall require a conditional use authorization,  
17 in addition to any other approvals necessary under the Planning Code:

18 (aa) Residential projects containing more than 10 new units that have not received  
19 issuance of their first site or building permit; or

20 (bb) Non-residential projects containing a net new addition or new construction of  
21 10,000 square feet or more that have not received issuance of their first site or building  
22 permit.

23 (C) Elimination of interim conditional use requirement. (i) At any time after the  
24 Controller has determined that Eastern Neighborhood impact fees are not being effectively  
25 utilized as set forth in Section 423.6(h)(B) ~~327.6(i)(B)~~ above, or fails to certify that they are

1 being effectively utilized as set forth in Section 423.6(h)(A) ~~327.6(i)(A)~~, the Planning  
2 Department may provide the Controller with a newly updated or revised Eastern  
3 Neighborhoods Capital Expenditure Evaluation Report.

4 (ii) Within 60 days of receiving an updated or revised Report, the Office of the  
5 Controller shall determine whether funds collected from the Eastern Neighborhoods Public  
6 Benefit Fee are being effectively utilized for capital projects serving the Eastern  
7 Neighborhoods consistent with the intent of the Section 10E.7 of the Administrative Code.

8 (iii) If, on the basis of a new, updated or revised Eastern Neighborhoods Capital  
9 Expenditure Evaluation Report, the Controller determines that the development impact fees  
10 collected to date are being effectively utilized as set forth in Section 423.6 (h)(A) ~~327.6(i)(A)~~  
11 above, any projects within the Eastern Neighborhoods Plan Area that required a conditional  
12 use authorization on an interim basis as set forth in Section 423.6(h)(B) ~~327.6(i)(B)~~ shall no  
13 longer require such conditional use authorization unless the underlying use requires  
14 conditional use authorization independent of the requirements set forth in Section 423.6(i)(B)  
15 ~~327.6(j)(B)~~.

16 SEC. 424 (formerly a portion of Section 249.33). (7) VAN NESS AND MARKET  
17 AFFORDABLE HOUSING AND NEIGHBORHOOD INFRASTRUCTURE FEE AND  
18 PROGRAM. Sections 424.1 through 424.5, hereafter referred to as Section 424.1 et seq., set forth the  
19 requirements and procedures for the Van Ness and Market Affordable Housing and Neighborhood  
20 Infrastructure Program. The effective date of these requirements shall be either May 30, 2008, which is  
21 the date that the requirements originally became effective, or the date a subsequent modification, if  
22 any, became effective.

23 SEC. 424.1. FINDINGS. (A) Purpose and Findings.

24 A. (i) Affordable Housing: The Van Ness and Market Residential SUD enables the  
25 creation of a very dense residential neighborhood through significant increases in



1 development potential. This increase in development potential permits an increase in market  
2 rate housing development. As described in Section 415.1, 315.2 affordable housing is a priority  
3 for San Francisco and additional demand for affordable housing is closely correlated to the  
4 development of new market rate housing. At the direction of the Board of Supervisors and as  
5 part of a larger analysis of development impact fees in the City, the City contracted with  
6 Keyser Marston Associates to prepare a nexus analysis in support of the Inclusionary Housing  
7 Program, or an analysis of the impact of development of market rate housing on affordable  
8 housing supply and demand.

9 The City's ~~current position is that the City's~~ Inclusionary Housing Program including the  
10 in-lieu fee provision which is offered as an alternative to building units within market rate  
11 projects, is not subject to the requirements of the Mitigation Fee Act, Government Code  
12 Sections 66000 et seq. Notwithstanding this policy, as an additional support measure, the City  
13 prepared a nexus study consistent with the Mitigation Fee Act to determine whether the Inclusionary  
14 Affordable Housing Program was supported by such analysis. While the City does not expect to alter its  
15 position on this matter, due to past legislative actions supporting such a study, the Citywide study being  
16 undertaken to conduct nexus studies in other areas, and a general interest in determining whether the  
17 Inclusionary Program can be supported by a nexus type analysis as an additional support measure, the  
18 City contracted to undertake the preparation of a nexus analysis. The final nexus study can be found  
19 in the Board of Supervisors File No. \_\_\_\_\_ and is incorporated by reference  
20 herein. The Board of Supervisors has reviewed the study and the Department's staff analysis  
21 and report of the study and, on that basis finds that the nexus study supports the current  
22 ~~i~~Inclusionary ~~Affordable~~ ~~Housing~~ Program requirements as specified in this Section 424.1 et  
23 seq. 249.33 combined with this Affordable Housing FAR Bonus Program. Specifically, the  
24 Board finds that the nexus study: identifies the purpose of the fee to mitigate impacts on the  
25 demand for affordable housing in the City; identifies the use to which the fee is to be put as

1 being to increase the City's affordable housing supply; and establishes a reasonable  
2 relationship between the use of the fee for affordable housing and the need for affordable  
3 housing and the construction of new market rate housing. Moreover, the Board finds that the  
4 current inclusionary requirements combined with the Affordable Housing FAR Bonus Program  
5 are less than the cost of mitigation and do not include the costs of remedying any existing  
6 deficiencies. The Board also finds that the study establishes that the current inclusionary  
7 requirements combined with the Affordable Housing FAR Bonus Program do not duplicate  
8 other City requirements or fees.

9 Moreover, according to the study undertaken by Seifel Consulting at the direction of the  
10 Planning Department, increased development potential in the Van Ness and Market  
11 Downtown Residential Special Use district through the increased FAR allowance enables an  
12 increased contribution to the Citywide Affordable Housing Fund without discouraging the  
13 development of new market rate housing. A copy of said study is on file with the Clerk of the  
14 Board of Supervisors *in File No.* \_\_\_\_\_.

15 B. (ii) Neighborhood Infrastructure. The Van Ness & Market Residential SUD enables  
16 the creation of a very dense residential neighborhood in an area built for back-office and  
17 industrial uses. Projects that seek the FAR bonus above the maximum cap would introduce a  
18 very high localized density in an area generally devoid of necessary public infrastructure and  
19 amenities, as described in the Market & Octavia Area Plan. While envisioned in the Plan, such  
20 projects would create localized levels of demand for open space, streetscape improvements,  
21 community facilities and public transit above and beyond the levels both existing in the area  
22 today and funded by the Market & Octavia Community Improvements Fee. Such projects also  
23 entail construction of relatively taller or bulkier structures in a concentrated area, increasing  
24 the need for offsetting open space for relief from the physical presence of larger buildings.  
25 Additionally, the FAR bonus provisions herein are intended to provide an economic incentive

1 for project sponsors to provide public infrastructure and amenities that improve the quality of  
2 life in the area. The bonus allowance is calibrated based on the cost of responding to the  
3 intensified demand for public infrastructure generated by increased densities available  
4 through the FAR density bonus program.

5 C. (iii) Public Improvements. The public improvements acceptable in exchange for  
6 granting the FAR bonus, and that would be necessary to serve the additional population  
7 created by the increased density, are listed below. All public improvements shall be consistent  
8 with the Market & Octavia Area Plan.

9 (1) (a) Open Space Acquisition and Improvement: Brady Park (as described in the  
10 Market & Octavia Area Plan), or other open space of comparable size and performance. Open  
11 space shall be dedicated for public ownership or permanent easement for unfettered public  
12 access and improved for public use, including landscaping, seating, lighting, and other  
13 amenities.

14 (2) (b) Streetscape and Pedestrian Improvements: Streetscape improvements within  
15 the Special Use District as described in the Market & Octavia Area Plan, including Van Ness  
16 and South Van Ness Avenues, Gough, Mission, McCoppin, Otis, Oak, Fell, 11th and 12th  
17 Streets, along with adjacent alleys. Improvements include sidewalk widening, landscaping and  
18 trees, lighting, seating and other street furniture (e.g. newsracks, kiosks, bicycle racks),  
19 signage, transit stop and subway station enhancements (e.g. shelters, signage, boarding  
20 platforms), roadway and sidewalk paving, and public art.

21 (3) (c) Affordable Housing. The type of affordable housing needed in San Francisco is  
22 documented in the City's Consolidated Plan and the Residence Element of the General Plan.  
23 New affordable rental housing and ownership housing affordable to households earning less  
24 than the median income is greatly needed in San Francisco.

25 SEC. 424.2. DEFINITIONS. See Section 401 of this Article.

1           SEC. 424.3. APPLICATION OF VAN NESS AND MARKET AFFORDABLE HOUSING AND  
2 NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.

3           (a) Application. Section 424.1 et seq. shall apply to any development project located in the  
4 Van Ness and Market Downtown Residential Special Use District, as established in Section 249.33 of  
5 this Code.

6           (b) Amount of Fee.

7           (i) All uses in any development project within the Van Ness and Market Downtown  
8 Residential Special Use District shall pay \$30.00 per net additional gross square foot of floor area in  
9 any portion of building area exceeding the base development site FAR of 6:1 up to a base development  
10 site FAR of 9:1.

11           (ii) All uses in any development project within the Van Ness and Market Downtown  
12 Residential Special Use District shall pay \$15.00 per net additional gross square foot of floor area in  
13 any portion of building area exceeding the base development site FAR of 9:1.

14           (c) Option for In-Kind Provision of Infrastructure Improvements and Fee Credits. The  
15 Commission may reduce the total amount of fees generated by the neighborhood infrastructure portion  
16 (\$15.00 per net additional gross square foot of floor area) of the Van Ness and Market Downtown  
17 Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee owed for  
18 specific development projects in cases where the Director has recommended approval and the project  
19 sponsor has entered into an In-Kind Improvements Agreement with the City. In-Kind Improvement  
20 Agreements may only be accepted if they are identified in the Market and Octavia Area Plan of the  
21 General Plan, mitigate impacts of growth in the general vicinity of the Van Ness and Market Downtown  
22 Residential Special Use District area, meet identified community needs as analyzed in the Market and  
23 Octavia Area Plan Community Improvements Program, and serve as a substitute for improvements  
24 funded by infrastructure impact fee revenue such as street improvements, transit improvements, and  
25 community facilities. Open space or streetscape improvements proposed to satisfy the usable open

1 space requirements of Section 135 are not eligible as in-kind improvements. No proposal for in-kind  
2 improvements shall be accepted that does not conform to the criteria above. Project sponsors that  
3 pursue In-Kind Improvement Agreements with the City will be charged time and materials for any  
4 additional administrative costs that the Department or any other City agency incurs in processing the  
5 request.

6 (1) The \$15.00 per gross square foot neighborhood infrastructure portion of the Van Ness  
7 and Market Downtown Residential Special Use District Affordable Housing and Neighborhood  
8 Infrastructure Fee may be reduced by the total dollar value of any infrastructure improvements  
9 provided through an In-kind Improvements Agreement recommended by the Director and approved by  
10 the Commission. For the purposes of calculating the total dollar value, the project sponsor shall  
11 provide the Department with a cost estimate for the proposed in-kind improvement(s) from two  
12 independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-  
13 specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it  
14 is indexed to current cost of construction. Based on these estimates, the Director shall determine the  
15 appropriate value of the in-kind improvements and the Commission shall reduce the infrastructure  
16 portion of the Van Ness and Market Downtown Residential SUD Affordable Housing and  
17 Neighborhood Infrastructure Fee otherwise due by an equal amount. No credit shall be made for land  
18 value unless ownership of land is transferred to the City or a permanent public easement is granted, the  
19 acceptance of which is at the sole discretion of the City.

20 (2) All In-Kind Improvement Agreements shall require the project sponsor to reimburse all  
21 City agencies for their administrative and staff costs in negotiating, drafting, and monitoring  
22 compliance with the In-Kind Improvements Agreement. The City also shall require the project sponsor  
23 to provide a letter of credit or other instrument, acceptable in form and substance to the Department  
24 and the City Attorney, to secure the City's right to receive improvements as described above.

1           (B) — ~~The Van Ness and Market Affordable Housing and Neighborhood Infrastructure~~  
2 ~~Program ("Program") is hereby established and shall be implemented through In-Kind public~~  
3 ~~improvements, participation in Community Facilities (Mello-Roos) District, or in-lieu payment to the~~  
4 ~~Van Ness and Market Neighborhood Infrastructure Fund ("Fund") or in-lieu payments to the Citywide~~  
5 ~~Affordable Housing Fund.~~

6           (i) — ~~The Program shall be administered by the Board of Supervisors, except for the in-lieu~~  
7 ~~fee payments to the Citywide Affordable Housing Fund, which shall be administered as provided for in~~  
8 ~~Section 315 et seq.~~

9           (C) — ~~Value, Form, and Timing of Contribution to the Program.~~

10          (i) — ~~The total value of the contribution ("contribution") to the Program shall be equal to~~  
11 ~~\$15.00 per additional gross square foot above a site FAR of 9:1. The contribution must be made or the~~  
12 ~~fee paid prior to issuance by the Department of Building Inspection of the first site or building permit~~  
13 ~~for the subject project. Except as provided in Section 7(C)(vii), \$0.00 must be paid as a fee to the~~  
14 ~~Citywide Affordable Housing Fund as described below in Subsection (7)(C)(v); and \$15.00 or its~~  
15 ~~equivalent must be paid or contributed to the Van Ness and Market Neighborhood Infrastructure~~  
16 ~~Program in one of the ways described below in Subsections (ii) through (iii) including any form of any~~  
17 ~~combination, either in whole or in part, of an In-Kind Agreement to provide neighborhood~~  
18 ~~improvements, In-Lieu Payment to the City Treasurer, or a Community Facilities District Agreement to~~  
19 ~~participate in a Mello-Roos Community Facilities District. The fee may be adjusted in accordance with~~  
20 ~~the procedures described in Section 326.3(d) or 315.6(b)3.~~

21          (ii) — ~~In-Kind Improvements. The Planning Commission may allow the provision of In-Kind~~  
22 ~~Improvements, through the approval of an In-Kind Agreement in accordance with the procedures~~  
23 ~~outlined in Section 326.3(e).~~

24          (iii) — ~~In-Lieu Payment. Because the total cost of the individual public improvements (e.g. a~~  
25 ~~public park or a streetscape project) may be greater than the proportional contribution to the Program~~

1 ~~or the need created by any one project, and because it may be infeasible or impractical to make a~~  
2 ~~fractional public improvement (e.g. acquisition of a fraction of a park) it is necessary to allow direct~~  
3 ~~payments, at the rate described in Subsection (7)(C)(i) above, in lieu of providing In-Kind~~  
4 ~~improvements, as a form of contribution, either in whole or in part, to the Program. Such payment~~  
5 ~~shall be made to the City Treasurer for deposit in the Van Ness and Market Neighborhood~~  
6 ~~Infrastructure Fund. Upon payment of the In-Lieu Payment in full to the Treasurer, the Treasurer shall~~  
7 ~~issue a certification that the credit has been paid.~~

8 (iv) ~~— Community Facilities District. The Planning Commission may allow the participation in~~  
9 ~~a Community Facilities (Mello-Roos) District through the procedures described in Section 326.3 (f)~~  
10 ~~and (g).~~

11 (v) ~~— Zero dollars per square foot (\$0.00) except as provided in 7(C)(vii) shall be deposited in~~  
12 ~~the special fund maintained by the Controller called the Citywide Affordable Housing Fund as~~  
13 ~~established by Section 313.12. Except as specifically provided in this Section, collection, management,~~  
14 ~~enforcement, and expenditure of funds shall conform to the requirements related to in-lieu fees in~~  
15 ~~Planning Code Sections 315 et seq., specifically including, but not limited to, the provisions of Section~~  
16 ~~315.6.~~

17 (vi) ~~— The sponsor shall present the Treasurer certification of In-Lieu Payment, or a signed In-~~  
18 ~~Kind Agreement and/or Community Facilities District Agreement totaling the full value of the~~  
19 ~~contribution to the Planning Department and Department of Building Inspection prior to the issuance~~  
20 ~~by DBI of the first site or building permit for the project. A failure of the Treasurer, DBI or the~~  
21 ~~Planning Department to give any notice under this Section shall not relieve a sponsor from compliance~~  
22 ~~with this Section.~~

23 (vii) ~~— At the close of the fiscal year in which the Market and Octavia Community~~  
24 ~~Improvements Program has generated funding for no less than \$211 million for expenditure in the plan~~  
25 ~~area, including revenue generated through Planning Code 249.33, and Section 326 fee payment, In-~~

1 ~~Kind and community facility district contributions; public grants; San Francisco general funds;~~  
2 ~~assessment districts; and other sources which contribute to the overall programming; all future funds~~  
3 ~~generated through this Section, 249.33 of the Planning Code shall be redirected one hundred (100)~~  
4 ~~percent to the Citywide Affordable Housing Fund.~~

5 SEC. 424.4. VAN NESS AND MARKET DOWNTOWN RESIDENTIAL SPECIAL USE  
6 DISTRICT AFFORDABLE HOUSING FUND. That portion of gross floor area subject to the \$30.00  
7 per gross square foot fee referenced in Section 424.3(b)(i) above shall be deposited into the special  
8 fund maintained by the Controller called the Citywide Affordable Housing Fund established by Section  
9 413.10. Except as specifically provided in this Section, collection, management, enforcement, and  
10 expenditure of funds shall conform to the requirements related to in-lieu fees in Planning Code Section  
11 415.1 et seq., specifically including, but not limited to, the provisions of Section 415.7.

12 ~~(D)~~ SEC. 424.5. VAN NESS AND MARKET DOWNTOWN RESIDENTIAL SPECIAL USE  
13 DISTRICT INFRASTRUCTURE FUND. (a) There is hereby established a separate fund set  
14 aside for a special purpose entitled the Van Ness and Market Neighborhood Infrastructure  
15 Fund ("Fund"). That portion of gross floor area subject to the \$15.00 per gross square foot fee  
16 referenced in Section 424.3(b)(ii) above shall be deposited into the Van Ness and Market  
17 Neighborhood Infrastructure Fund collected by the deposited in this the fFund, which shall to be  
18 maintained by the Controller. The receipts of the Fund are hereby appropriated in accordance  
19 with law to be used solely to fund public infrastructure subject to the following conditions:

20 (i) All monies deposited in the Fund, plus accrued interest, shall be used solely to  
21 design, engineer, acquire and develop neighborhood open spaces and streetscape  
22 improvements that result in new publicly-accessible facilities within the Van Ness and Market  
23 Downtown Residential Special Use District or the area bounded by 10th Street, Howard Street,  
24 South Van Ness Avenue, the northeastern line of the Central Freeway, Market Street, Franklin  
25 Street, Hayes Street, and Polk Street. These improvements shall be consistent with the



1 Market and Octavia Area Plan of the General Plan and any Plan that is approved by the  
2 Board of Supervisors in the future for the area covered by ~~this SUD~~ the Van Ness and Market  
3 Downtown Residential Special Use District, except that monies from the Fund may be used by  
4 the Planning Commission to commission studies to revise the fee ~~pursuant to Subsection~~  
5 ~~(7)(C)(i)~~ above, or to commission landscape, architectural or other planning, design and  
6 engineering services in support of the proposed public improvements.

7 (ii) No portion of the Fund may be used, by way of loan or otherwise, to pay any  
8 administrative, general overhead, or similar expense of any public entity.

9 (iii) The Controller's Office shall file an annual report with the Board of Supervisors  
10 by the end of the City's fiscal year beginning one year after the effective date of this ordinance, which  
11 report shall set forth the amount of money collected in the Fund. Monies in the Fund shall be  
12 appropriated by the Board of Supervisors and administered by the Director of Planning.

13 (iv) At the close of a fiscal year in which the Market and Octavia Community Improvements  
14 Program has generated funding for no less than \$211 million of expenditures in the plan area,  
15 including revenue generated through this Section 424.1 et seq., Section 421 fee payments, in-kind  
16 improvements, public grants, San Francisco general funds, assessment districts, and other sources  
17 which contribute to the overall programming, all future funds generated through Section 424.1 et seq.  
18 shall be redirected one hundred (100) percent to the Citywide Affordable Housing Fund.

19 ~~(v) (iv)~~ Expenditure of funds shall be coordinated with appropriate City agencies as  
20 detailed in Section 421.5 ~~326.6~~ (d) and (e).

21 ~~(vi) (v)~~ The Director ~~of Planning~~ shall have the authority to prescribe rules and  
22 regulations governing the Fund, which are consistent with Section 424.1 et seq. this ordinance.  
23 The Director ~~of Planning~~ shall make recommendations to the Board regarding allocation of  
24 funds.

1            SEC. 425 (formerly Section 135.3(d)). ALTERNATIVE MEANS OF SATISFYING THE  
2 OPEN SPACE REQUIREMENT IN THE SOUTH OF MARKET MIXED USE DISTRICTS. (The  
3 effective date of these provisions shall be either April 6, 1990, the date that it originally became  
4 effective, or the date a subsequent modification, if any, became effective.)

5            If it is the judgment of the Zoning Administrator that an open space satisfying the  
6 requirements and standards of subsections (b) and (c) of Section 135.3 of this Code cannot be  
7 created because of constraints of the development site, or because the project cannot provide  
8 safe, convenient access to the public, or because the square footage of open space is not  
9 sufficient to provide a usable open space, the Zoning Administrator may (i) authorize, as an  
10 eligible type of open space, a pedestrian mall or walkway within a public right-of-way which is  
11 improved with paving, landscaping, and street furniture appropriate for creating an attractive  
12 area for sitting and walking, or (ii) waive the requirement that open space be provided upon  
13 payment to the Open Space Fund of a fee of \$.80 for each square foot of open space  
14 otherwise required to be provided. These amounts shall be adjusted annually effective April  
15 1st of each calendar year by the percentage of change in the Building Cost Index used by the  
16 San Francisco Bureau of Building Inspection. This payment shall be paid in full to the City  
17 prior to the issuance of any temporary or other certificate of occupancy for the subject  
18 property. Said fee shall be used for the purpose of acquiring, designing, improving and/or  
19 maintaining park land, park facilities, and other open space resources, which is expected to  
20 be used solely or in substantial part by persons who live, work, shop or otherwise do business  
21 in the South of Market Base District, as that District is defined in City Planning Code Section  
22 820 of this Code and identified on Sectional Map 3SU of the Zoning Map of the City and  
23 County of San Francisco. Said fee, and any interest accrued by such fee, shall be used for the  
24 purpose stated herein unless it is demonstrated that it is no longer needed.

1            SEC. 426 (formerly Section 135.3(e)). ALTERNATIVE MEANS OF SATISFYING THE  
2 OPEN SPACE REQUIREMENT IN THE EASTERN NEIGHBORHOODS MIXED USE  
3 DISTRICTS. (The effective date of these provisions shall be either December 19, 2008, the date that  
4 they originally became effective, or the date a subsequent modification, if any, became effective.)

5            In the Eastern Neighborhoods Mixed Use Districts, the open space requirement may  
6 be satisfied through payment of a fee of \$76 for each square foot of usable open space not  
7 provided pursuant to that Variance. This fee shall be adjusted in accordance with Section  
8 423.3 of this Article 327.3(d). This fee shall be paid into the Eastern Neighborhoods Public  
9 Benefits Fund, as described in Section 423 of this Article 327. Said fee shall be used for the  
10 purpose of acquiring, designing, and improving park land, park facilities, and other open  
11 space resources, which is expected to be used solely or in substantial part by persons who  
12 live, work, shop or otherwise do business in the Eastern Neighborhoods Mixed Use districts.

13            SEC. 427 (formerly Section 135 (j)). PAYMENT IN CASES OF VARIANCE OR  
14 EXCEPTION. (The effective date of these provisions shall be either December 19, 2008, the date that  
15 they originally became effective, or the date a subsequent modification, if any, became effective.)

16            In the Eastern Neighborhoods Mixed Use Districts, should a Variance from usable  
17 open space requirements for residential uses be granted by the Zoning Administrator, or an  
18 exception be granted for those projects subject to the Section 329 process, a fee of \$327 shall  
19 be required for each square foot of usable open space not provided pursuant to that Variance.  
20 This fee shall be adjusted in accordance with Section 423.3 of this Article 327.3(d). This fee  
21 shall be paid into the Eastern Neighborhoods Public Benefits Fund, as described in Section  
22 423 of this Article 327. Said fee shall be used for the purpose of acquiring, designing, and  
23 improving park land, park facilities, and other open space resources, which is expected to be  
24 used solely or in substantial part by persons who live, work, shop or otherwise do business in  
25 the Eastern Neighborhoods Mixed Use Districts.

1            SEC. 428 (formerly Section 143). STREET TREES, R, SPD, RSD, NC, C-3, DTR, MUG,  
2 MUO, MUR, UMU, SLR, SLI AND SSO DISTRICTS. (The effective date of these requirements  
3 shall be either September 17, 1985, the date that they originally became effective, or the date a  
4 subsequent modification, if any, became effective.)

5            (a)     In any R, SPD, RSD, NC, C-3, DTR, MUG, MUO, MUR, UMU, SLR, SLI, or SSO  
6 District, street trees shall be installed by the owner or developer in the case of construction of  
7 a new building, relocation of a building, or addition of gross floor area equal to 20 percent or  
8 more of the gross floor area of an existing building, and within the RED, SPD, RSD, MUG,  
9 MUO, MUR, UMU, SLR, SLI and SSO Districts, in the case of change of 20 percent or more  
10 of the occupied floor area of an existing building to another use.

11           (b)     The street trees installed shall be a minimum of one 24-inch box tree for each 20  
12 feet of frontage of the property along each street or alley, with any remaining fraction of 10  
13 feet or more of frontage requiring an additional tree. Such trees shall be located either within a  
14 setback area on the lot or within the public right-of-way along such lot.

15           (c)     The species of trees selected shall be suitable for the site, and, in the case of  
16 trees installed in the public right-of-way, the species and locations shall be subject to approval  
17 by the Department of Public Works. Procedures and other requirements for the installation,  
18 maintenance and protection of trees in the public right-of-way shall be as set forth in Article 16  
19 of the Public Works Code.

20           (d)     In any case in which DPW ~~the Department of Public Works~~ cannot grant approval  
21 for installation of a tree in the public right-of-way, on the basis of inadequate sidewalk width,  
22 interference with utilities or other reasons regarding the public welfare, and where installation  
23 of such tree on the lot itself is also impractical, the requirements of this Section 428 ~~143~~ may  
24 be modified or waived by the Zoning Administrator to the extent necessary.

1 (e) In C-3 and South of Market Mixed Use Districts, the Zoning Administrator may  
2 allow the installation of planter boxes or tubs or similar landscaping in place of trees when that  
3 is determined to be more desirable in order to make the landscaping compatible with the  
4 character of the surrounding area, or may waive the requirement in C-3 districts where  
5 landscaping is considered to be inappropriate because it conflicts with policies of the  
6 Downtown Plan, a component of the General Plan, such as the policy favoring unobstructed  
7 pedestrian passage.

8 (f) In Eastern Neighborhoods Mixed Use Districts, street trees shall be installed  
9 along all street frontages in the public right of way as set forth in subsection (b). Street tree  
10 basins shall be edged with decorative treatment, such as pavers or cobbles, in accordance  
11 with City standards. In the event that ~~the Department of Public Works~~ DPW does not approve for  
12 any reason the installation of the number of trees required as set forth in subsection (b), an in-  
13 lieu fee for each missed street tree, in an amount set forth in Article 16 of the Public Works  
14 Code, shall be paid to the Adopt A Tree Fund. When a pre-existing site constraint prevents  
15 the installation of a street tree, as an alternative to payment of any portion of the in-lieu fee,  
16 the Zoning Administrator may allow the installation of sidewalk landscaping in accordance  
17 with all adopted standards and requirements.

18 (g) DTR Districts. In DTR Districts, in addition to the requirements of subsections  
19 (a)-(d) above, all street trees shall:

20 (1) be open to the sky and free from all encroachments for that entire width, planted  
21 at least one foot back from the curb line;

22 (2) have a minimum 2 inch caliper, measured at breast height;

23 (3) branch a minimum of 8 feet above sidewalk grade;

24 (4) where in the public right-of-way, be planted in a sidewalk opening at least 16  
25 square feet, and have a minimum soil depth of 3 feet 6 inches;

1 (5) where planted in individual basins rather than a landscaped planting bed, be  
2 protected by a tree grate with a removable inner ring to provide for the tree's growth over time;

3 (6) provide a below-grade environment with nutrient-rich soils, free from overly-  
4 compacted soils, and generally conducive to tree root development;

5 (7) be irrigated, maintained and replaced if necessary by the property owner, in  
6 accordance with Sec. 174 of the Public Works Code; and

7 (8) be planted in a continuous soil-filled trench parallel to the curb, such that the  
8 basin for each tree is connected.

9 SEC. 429 (formerly Section 149). ARTWORKS, RECOGNITION OF ARCHITECT AND  
10 ARTISTS AND MODEL REQUIREMENTS IN C-3 DISTRICTS. (The effective date of these  
11 requirements shall be either September 17, 1985, the date that they originally became effective, or the  
12 date a subsequent modification, if any, became effective.)

13 (a) Artworks. In the case of construction of a new building or addition of floor area in  
14 excess of 25,000 square feet to an existing building in a C-3 District, works of art costing an  
15 amount equal to one percent of the construction cost of the building or addition as determined  
16 by the Director of the Department of Building Inspection shall be installed and maintained (i) in  
17 areas on the site of the building or addition and clearly visible from the public sidewalk or the  
18 open-space feature required by Section 138, or (ii) on the site of the open-space feature  
19 provided pursuant to Section 138, or (iii) upon the approval of any relevant public agency, on  
20 adjacent public property, or (iv) in a publicly accessible lobby area of a hotel. In lieu of  
21 installing and maintaining works of art pursuant to subsections (i) through (iv) above, a project  
22 sponsor may elect to contribute a sum of money at least equivalent to the cost of the artwork  
23 to finance, in whole or in part, rehabilitation and restoration of the exterior of a publicly-owned  
24 building provided that the building is (i) owned by the City and County of San Francisco, and  
25 (ii) located in a P District adjacent to a C-3 District, and (iii) designated as an historical

1 landmark by Article 10 of this Code or designated as a Category I Significant Building by  
2 Article 11 of this Code and listed as a National Historical Landmark on the National Historical  
3 Register; provided, however, that the right to elect to use this in-lieu provision to satisfy the  
4 obligations of this Section shall terminate five years from the effective date of this *provision*  
5 *ordinance*. Said works of art shall be installed prior to issuance of the first certificate of  
6 occupancy; provided, however, that if the Zoning Administrator concludes that it is not feasible  
7 to install the works within that time and that adequate assurance is provided that the works  
8 will be installed in a timely manner, the Zoning Administrator may extend the time for  
9 installation for a period of not less than 12 months. Said works of art may include sculpture,  
10 bas-relief, murals, mosaics, decorative water features, tapestries or other artworks  
11 permanently affixed to the building or its grounds, or a combination thereof, but may not  
12 include architectural features of the building, except as permitted with respect to the in lieu  
13 contribution regarding publicly owned buildings meeting the criteria described above. Artworks  
14 shall be displayed in a manner that will enhance their enjoyment by the general public. The  
15 type and location of artwork, but not the artistic merits of the specific artwork proposed, shall  
16 be approved in accordance with the provisions of Section 309 *of this Code*. The term  
17 "construction cost" shall be determined in the manner used to determine the valuation of work  
18 as set forth in Section 107.2 of the Building Code.

19 (b) Recognition of Architects and Artists. In the case of construction of a new  
20 building or an addition of floor area in excess of 25,000 square feet to an existing building in a  
21 C-3 District, a plaque or cornerstone identifying the project architect and the creator of the  
22 artwork provided pursuant to Subsection (a) and the erection date shall be placed at a publicly  
23 conspicuous location on the building prior to the issuance of the first certificate of occupancy.  
24  
25

1 (c) Models. In a C-3 District, in the case of construction of a new building, or any  
2 addition in height in excess of 40 feet to an existing building, two models shall be submitted to  
3 the *Planning Department of City Planning* prior to approval of the project, as follows:

4 (1) One model of the building at a scale of 1" = 100'; and

5 (2) One model of the block in which the building is located at a scale of 1" = 32',  
6 which model shall include all the buildings on the block on which the building is located and  
7 the streets surrounding the block to the centerline of the streets and shall use as its base the  
8 land form starting at sea level; provided, however, that if the *Planning Department of City*  
9 *Planning* determines that it has an up-to-date model of the block in which the building is  
10 located, only a model of the building shall be submitted.

11 (d) Procedure Regarding Certificate of Occupancy. The Director of *the Department of*  
12 *Building Inspection DBI* shall provide notice in writing to the Zoning Administrator at least five  
13 business days prior to issuing the first certificate of occupancy for any building subject to the  
14 provisions of this Section. If the Zoning Administrator notifies the Director *of DBI* within such  
15 time that the provisions of this Section have not been complied with, the Director *of DBI* shall  
16 deny the permit. If the Zoning Administrator notifies the Director *of DBI* that the provisions of  
17 this Section have been complied with or fails to respond within five business days, the permit  
18 of occupancy shall not be disapproved pursuant to this Section. *As used herein, the "first*  
19 *certificate of occupancy" shall mean either a temporary certificate of occupancy or a Certificate of*  
20 *Final Completion and Occupancy as defined in San Francisco Building Code Sections 109.3 and 109.4,*  
21 *whichever is issued first.* The procedure set forth in this subsection is not intended to preclude  
22 enforcement of the requirements of this Section through any means otherwise authorized.

23 Section 3. OPERATIVE DATE. The operative date of this ordinance shall be May 15,  
24 2010.



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Section 4. INSTRUCTION TO PUBLISHER.

The publisher shall put a note at the original location of the renumbered sections stating that the text of those sections has been moved and providing the new section number.

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

By: \_\_\_\_\_  
JUDITH A. BOYAJIAN  
Deputy City Attorney

**REVISED LEGISLATIVE DIGEST**

[Development Impact and In-Lieu Fees.]

**Ordinance amending the San Francisco Planning Code to create Article 4 for development impact fees and requirements, move Planning Code Sections 135(j), 135.3(d), 135.3(e), 139, 143, 149, a portion of 249.33, 313-313.15, 314-314.8, 315-315.9, 318-318.9, 319-319.7, 326-326.8, 327-327.6, and 331-331.6 and Chapter 38 of the San Francisco Administrative Code (Transit Impact Development Fee) to Article 4, and renumber and amend the sections; to provide that the Department of Building Inspection (DBI) will collect the development fees prior to issuance of the first building permit or other document authorizing project construction and verify that any in-kind public improvements required in lieu of a development fee are implemented prior to issuance of the first certificate of occupancy; to allow a project sponsor to defer payment of a development fee upon agreeing to pay a deferral surcharge, which option shall expire after three years unless further extended; to add introductory sections to Article 4 for standard definitions and procedures, delete duplicative code provisions and use consistent definitions, language and organization throughout; to require annual Citywide development fee reports and fee adjustments, and development fee evaluations every five years; to provide that the ordinance's operative date is May 15, 2010; and to instruct the publisher to put a note at the original location of the renumbered sections stating that the text of those sections has been moved and providing the new section number; adopting findings, including Section 302, environmental findings, and findings of consistency with the General Plan and Planning Code Section 101.1.**

Existing Law

The Planning Code imposes a number of impact fees on development projects and also requires certain development projects to provide physical improvements, facilities or below market rate housing units ("development impact requirements") as a condition of approval of the building or site permit for the projects. These development impact fees requirements are imposed to mitigate the estimated impacts of increased demand for public services, facilities or housing caused by development projects. In many cases, the Planning Code gives project sponsors the option of paying a fee in lieu of providing physical improvements, facilities or below market rate housing units ("in-lieu fees") to mitigate the effects of new development. Development impact and in-lieu fees are distinct and different from fees for service or permit processing fees, which reimburse the City for the actual time and material expenses of City staff reviewing and approving the permits required for new development.

Most of the City's development impact fees, in-lieu fees, and development impact requirements are scattered throughout various sections of the San Francisco Planning Code. In addition to the Planning Code development impact fees and requirements, the Municipal Transportation Agency imposes a Transit Impact Development Fee (TIDF) on certain projects under Chapter 38 of the San Francisco Administrative Code, the San Francisco Public Utilities

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Commission imposes water and wastewater capacity charges and a sewer connection fee by resolution of the PUC Commission, and the San Francisco Unified School District imposes a school fee under provisions of State law.

Most of the City's development fees are collected by the Office of the Treasurer prior to issuance of the first site or building permit; some, like the TIDF, are payable prior to issuance of the first certificate of occupancy. The school fee is currently collected by the School District prior to issuance of the first site or building permit, and the PUC divides its collection between site permit and first certificate of occupancy.

#### Amendments to Current Law

The proposed legislation creates an Article 4 in the Planning Code for development impact fees, development impact requirements and in-lieu fees. It moves the following code sections into the new Article 4, and renumbers them: Planning Code Sections 135(j), 135.3(d), 135.3(e), 139, 143, 149, a portion of 249.33, 313-313.15, 314-314.8, 315-315.9, 318-318.9, 319-319.7, 326-326.8, 327-327.6, 331-331.6 and San Francisco Administrative Code Chapter 38. The legislation adds introductory sections for standard definitions and provisions that are the same for all of the development impact fees and requirements, deletes duplicative code provisions, and amends the sections so that they use consistent definitions, language and organization throughout.

A companion ordinance will amend the San Francisco Building Code to provide that a newly-created Development Fee Collection Unit at the Department of Building Inspection will collect all development impact and in-lieu fees, including fees assessed by the Public Utilities Commission and the San Francisco Unified School District if those agencies separately agree to participate in the proposed collection process. The Development Fee Collection Unit will enforce compliance with the development impact requirements and ensure that all development impact fees have been paid and/or development impact requirements have been implemented to the satisfaction of the responsible department or agency before issuing any building permit, other construction document, or certificate of occupancy for a development project. The Unit will also institute lien proceedings, if necessary, to collect any unpaid development impact or in-lieu fees.

The legislation simplifies the existing law by requiring that all development fees are payable prior to issuance of the first building permit or other document authorizing construction of the project, but provides that a project sponsor has the option to defer payment to a date prior to issuance of the first certificate of occupancy if the sponsor agrees to pay a deferral surcharge equivalent to the effective interest that the City would have accrued on the funds if it collected the fees at the earlier date. This deferral option is available only to project sponsors who have not already paid the fee and will expire after three years unless the option is further extended.

The Controller will prepare an annual report for the Board's Land Use & Economic Development Committee and the Planning Commission, organized by fee account, that will

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provide specific information on the development fees and recommend construction cost inflation adjustments to the fees. The Controller will also prepare a report every five years that will be a comprehensive evaluation of all of the development impact fees and development impact requirements and will include information required by the California Mitigation Fee Act.

### Background Information

In March, 2008, San Francisco published its Citywide Development Impact Fee Study Consolidated Report. The purpose of the Study was to evaluate the overall state, effectiveness, and consistency of the City's development impact fee collection process and to identify improvements. Among other things, the Study cited the City's decentralized process as a problem. Centralizing the collection of development impact and in-lieu fees within DBI and providing a process whereby DBI can ensure that building permits, other documents that authorize construction, and certificates of occupancy for the project are not issued before all development fees are paid and/or development impact requirements are satisfied will: (1) centralize and streamline the process, (2) ensure the consistency and accuracy of fee collection and the enforcement of development impact requirements, and (3) provide information to both the sponsors of development projects and the public concerning the application and imposition of the City's myriad development fee and development impact requirements on development projects.

Another central goal of the legislation and its companion ordinance is to lessen the financial burden of the City's current development impact fee requirements in order to improve the financial viability of development projects on the margin so that they are comparatively easier to finance when economic conditions improve and construction lending is once again available. Working with the affected City agencies, the Office of Economic and Workforce Development developed these specific changes as part of a larger set of stimulus policies designed to spur construction jobs and development revenues for the City. This will be done through a variety of policy changes.

Under current rules, the majority of the City's development impact fees are due prior to issuance of the first building or site permit. Allowing a project sponsor to defer collection of development impact fees to much later in the permitting process should lower initial equity participation requirements and/or the carrying costs of construction loans. The farther back in time the City can defer collection, the greater the financial benefit to individual development project pro-formas and the more likely a project will commence construction earlier than would be the case under the current system. Because most developers pay higher interest rates on commercial loans or equity to finance early payment of impact fees than the City Treasurer by collecting these fees early in the process, both the public and private project sponsors should benefit from a system that makes the City whole while allowing project sponsors to save the margin of difference between the private and public interest rates.

In addition to reducing the overall financial feasibility of individual projects, the requirement to pay development impact fees at the beginning of the permitting process also prevents many

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project applicants from paying the permit processing fees necessary for Planning Department and other City staff to review and approve individual building permits. This, in turn, exacerbates staff lay-offs in recessions by restricting the flow of permit processing fees to an even greater degree than might otherwise occur but for the requirement that impact fees be paid up-front. For larger projects, the cost of permit processing fees is relatively insignificant compared to the cost of development impact fees. When the business cycle eventually rebounds and developers can once again finance up-front development impact fees, City agencies must re-hire staff to handle the increased permit load and a processing backlog ensues, adding further to delays. As a result, the construction of many projects that could have been "shovel ready" is further delayed.

The cost to the City of delaying fee collection is off-set by a deferral surcharge that would be required if a project sponsor elects to defer payment, the amount of which is equivalent to the effective interest the City would have accrued on the funds if it collected the fees at the earlier date. Allowing payment deferral is also off-set by the following factors: (1) the City cannot safely spend development impact fees when it collects them early in the permitting process because the fees will have to be refunded if the project is never actually built or occupied, (2) most, if not all, development impact fees are used for long-range planning efforts so delaying their collection is not necessarily delaying delivery of public infrastructure and affordable housing, (3) in any given fiscal year, once a project commences substantial construction, the City can assume, for budgetary reasons, that development impact fees will be available for capital projects and plan to spend that money accordingly, and (4) any "opportunity costs" attributable to deferring collection of development impact fees would be off-set with economic gains from earlier collection of property and transfer tax proceeds due to projects commencing and selling or leasing sooner than under the current impact fee collection system.



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

DATE: March 16, 2010  
 TO: The Board of Supervisors  
 FROM: AnMarie Rodgers, Manager of Legislative Affairs  
 Teresa Ojeda, Manager of Information and Analysis Group  
 RE: Development Stimulus and Fee Reform

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Board File Numbers: 091275/091275-2 Development Impact and In-Lieu Fees;  
091251/091251-2 Development Fee Collection Procedure Administrative Fee;  
 and  
091252 Affordable Housing Transfer Fee Restriction Alternative for  
 Inclusionary & Jobs Housing Linkage Programs

This memorandum is in response to a Planning Commission request that the Department provide information to the Board of Supervisors on projects that are subject to area plan impact fees and/or affordable housing requirements and that may be affected by proposed Development Stimulus and Fee Reform legislation.

**SUMMARY:** Table 1 is a summary of projects that are subject to 1) plan area impact fees; 2) Section 313 requirements for the Jobs-Housing Linkage Program; and 3) Section 315 requirements for the Residential Inclusionary Affordable Housing Program.

Table 1:

Requirement	Entitled		Not Entitled	
	No. of Projects	Units or Sq Ft	No. of Projects	Units or Sq Ft
Plan Area Impact Fees:(residential units)	42	4,090	45	2,050
Section 313: Office (square feet)	21	1,142,775	18	4,518,948
Section 315: Inclusionary Affordable Housing program (Residential Units)	78	8,949	72	5,197

"Entitled" projects are those projects that have received City Planning entitlements but have not received Department of Building Inspection approvals as of 12/31 2009. Projects that have filed applications for City Planning entitlement but have yet to receive a decision are "Not Entitled." It should be noted that some projects may be counted twice as some projects subject to Plan Area impact fees may also be required to comply with Section 313 or Section 315.

**DATA SOURCE:** The tables submitted are from the 2009 fourth quarter development pipeline database obtained from Planning Department and Department of Building Inspection project and permit tracking databases and includes applications filed with the Planning Department as of 12/31/2009. San Francisco

Redevelopment Agency (SFRA) projects are included in this accounting but not all of them may be subject to the area plan, office or inclusionary requirements. The SFRA entitles applications independently and under redevelopment agency jurisdiction of the Redevelopment Code. Only projects that have to comply with the Planning Code would be subject to planning fees and the fee deferral legislation. Projects entitled per SFRA controls do not need to meet Planning Code requirements and therefore could not defer fees that were not paid.

**What is not included:** Projects that are a) under construction; b) have received building permit approvals or have been issued a building permit ("BP"), or c) have had BP re-instated are not included in this accounting. Very large projects in the pipeline -- such Treasure Island, Park Merced and the Bayview Waterfront Project -- are assumed to have developer agreements in lieu of §315 requirements and are therefore not included. Mission Bay projects are also exempt from these requirements and are not included.<sup>1</sup>

**PROJECTS SUBJECT TO PLANNING AREA FEES:** Table 2 is a summary of projects subject to planning area fees.

Table 2:

Planning Area	Entitled		Not Entitled		Total No Of Projects	
	No of Projects	No of Units	No of Projects	No of Units	No of Projects	No of Units
Balboa Park	3	230	1	30	4	260
Central Waterfront	1	10	-	-	1	10
East SoMa	11	680	13	940	24	1,620
Market Octavia	9	1,000	12	700	21	1,700
Mission	7	30	17	370	24	400
Rincon Hill	5	1,530	-	-	5	1,530
Showplace Sq/ Potrero Hill	6	610	2	10	8	620
<b>Total</b>	<b>42</b>	<b>4,090</b>	<b>45</b>	<b>2,050</b>	<b>87</b>	<b>6,140</b>

Details of all projects that may be subject to plan area impact fees can be found on *Appendix List 1*.

<sup>1</sup> Mission Bay projects are not entitled by the Planning Department. "This Plan and the other Plan Documents, including the Design for Development, shall supersede the San Francisco Planning Code in its entirety." Mission Bay North Redevelopment Plan, San Francisco Redevelopment Agency, 1998.

**PROJECTS SUBJECT TO OFFICE FEES:** Table 3 below summarizes projects subjects to Section 313, the Jobs-Housing Linkage Program, by Planning Area.

**Table 3:**

Planning Area	Entitled		Not Entitled		Total No Of Projects	
	No of Projects	No of SF	No of Projects	No of SF	No of Projects	No of SF
Balboa Park	1	1,140	-	-	1	1,140
East SoMa	1	3,860	-	-	1	3,860
Market Octavia	1	9,900	2	34,900	3	44,800
Rincon Hill	1	24,500	-	-	1	24,500
Rest of the City	17	1,103,370	17	4,485,550	34	5,588,920
<b>Total</b>	<b>21</b>	<b>1,142,770</b>	<b>19</b>	<b>4,520,450</b>	<b>40</b>	<b>5,663,220</b>

*Appendix List 2* includes all office projects citywide that may be subject to Section 313 and have not yet paid fees. Projects in Redevelopment Areas are included to be on the conservative side.

**PROJECTS SUBJECT TO INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS:** Table 4 below summarizes projects subject to Section 315, the City's inclusionary affordable housing requirements.

**Table 4:**

Plan District	Entitled		Not Entitled		Total No of Projects	
	No of Projects	No of Units	No of Projects	No of Units	No of Projects	No of Units
Balboa Park	3	230	1	30	4	260
Central Waterfront	1	10	-	-	1	10
East SoMa	7	590	10	890	17	1,480
Market Octavia	8	1,000	9	690	17	1,690
Mission	3	20	11	340	14	360
Rincon Hill	5	1,530	-	-	5	1,530
Showplace Sq/ Potrero Hill	1	450	-	-	1	450
Visitacion Valley	1	10	-	-	1	10
Rest of the City	49	5,100	42	3,420	91	8,520
<b>Total</b>	<b>78</b>	<b>8,940</b>	<b>73</b>	<b>5,370</b>	<b>151</b>	<b>14,310</b>

*Appendix List 3* includes all projects subjects to the City's Inclusionary Affordable Housing requirement that have not yet paid fees. Projects in Redevelopment Areas, except Mission Bay are included to be on the conservative side.



APPENDIX

List 1:  
**PROJECTS SUBJECT TO AREA PLAN IMPACT FEES, BY ENTITLEMENT  
 AND PLANNING AREA**

ENTITLED PROJECTS			
Planning Area	Project Address	No. of Units	Planning Case Number
Balboa Park	1446 OCEAN AV	13	2008.0538
	1150 OCEAN AV	159	2006.0884
	50 PHELAN AV	60	2009.1117
Central Waterfront	1025 TENNESSEE ST	12	2004.0648
East SoMa	12 SHERMAN ST	3	2007.1015
	251 06TH ST	83	2004.0999
	452 TEHAMA ST	20	2005.1026
	345 06TH ST	33	2005.0876
	900 FOLSOM ST	300	2007.0689
	260 05TH ST	151	2007.0690
	42 HARRIET ST	2	2008.0084
	250 BRANNAN ST	51	2006.0451
	136 SOUTH PARK AV	1	2005.0418
	246 RITCH ST	19	2006.1348
Market Octavia	750 02ND ST	18	2007.0007
	580 HAYES ST	90	2005.0651
	1390 MARKET ST	230	2005.0979
	2001 MARKET ST	72	2008.0550
	149 FELL ST	2	2009.0422
	1 FRANKLIN ST	35	2008.1328
	335 OAK ST	16	2008.0988
	4 OCTAVIA ST	49	2008.0569
Mission	55 Laguna Street	491	2004.0773
	2210 MARKET ST	20	2006.1409
	1340 NATOMA ST	3	2007.0310
	3547 20TH ST	2	2007.0308
	3360 20TH ST	6	2005.0370
	1196 HAMPSHIRE ST	2	2008.0240
	1280 HAMPSHIRE ST	3	2008.1063
Rincon Hill	3135 24TH ST	12	2005.1076
	953 TREAT AV	5	2007.0981
	399 FREMONT ST	432	2006.0358
	340 FREMONT ST	384	2004.0552
	105 HARRISON ST	259	2007.1250
	429 BEALE ST	113	2007.1121
	425 First Street	340	2003.0029

Showpl/Potrero	838 KANSAS ST	2	2007.1484
	1036 WISCONSIN ST	2	2008.0870
	1321 DE HARO ST	3	2008.0505
	1250 DE HARO ST	2	2008.0636
	1740 17th Street	154	2004.0872
	1000 16TH ST.	450	2003.0527
VisVal	95 LELAND AV	8	2006.1082
<b>NOT ENTITLED PROJECTS</b>			
Balboa Park	1607-1649 Ocean Ave.	31	2006.0592
East SoMa	574 NATOMA ST	10	2008.0795
	537 NATOMA ST	14	2005.0990
	457 TEHAMA ST	1	2006.0123
	1044 FOLSOM ST	38	2009.1109
	374 5TH ST	47	2009.0765
	725-765 Harrison Street	510	2005.0759
	40 CLEVELAND ST	4	2005.1202
	935 FOLSOM ST	69	2006.0241
	205 SHIPLEY ST	51	2006.0679
	468 CLEMENTINA ST	25	2005.0424
	456 CLEMENTINA ST	12	2006.0072
	190 RUSS ST	8	2006.0521
	Market Octavia	938 HOWARD ST	154
85 BROSINAN ST		3	2007.0984
1845 MARKET ST		2	2006.1413
1540 MARKET ST		180	2009.0159
200 DOLORES ST		13	2008.0992
360 OCTAVIA ST		16	2008.0428
1960-1998 MARKET ST		115	2006.1431
299 VALENCIA ST		44	2006.0432
25 DOLORES ST		46	2006.0848
401 Grove Street		70	2007.0487
2175 MARKET ST		60	2006.1060
543 GROVE ST		3	2006.1224
Mission	746 LAGUNA ST	143	2005.1085
	500 CAPP ST	2	2009.0757
	2100 MISSION ST	29	2009.0880
	910 YORK ST	2	2009.0858
	2558 MISSION ST	125	2005.0694
	1376 FLORIDA ST	2	2009.0124
	2652 HARRISON ST	30	2006.0054
	3241 25TH ST	3	2007.0659
	899 VALENCIA ST	18	2004.0891
	2374 FOLSOM ST	4	2007.1209
80 JULIAN AV	9	2009.1095	

Mission	3500 19TH ST	17	2006.1252
	1050 VALENCIA ST	16	2007.1457
	3249 17TH ST	5	2005.1155
	49 JULIAN AV	8	2005.0233
	1875 MISSION ST	60	2004.0674
	1801 MISSION ST	18	2004.0675
	411 VALENCIA ST	24	2009.0180
Showplace Sq/Potrero	1366 SAN BRUNO AV	3	2008.0614
	1047 TEXAS ST	3	2008.0665
Visitacion Valley	101 LELAND AV	4	2007.1472

List 2:

**PROJECTS SUBJECT TO JOBS-HOUSING LINKAGE FEES,  
BY ENTITLEMENT AND PLANNING AREA**

ENTITLED PROJECTS			
Planning Area	Project Address	Office	Planning Case Number
Balboa Park	50 PHELAN AV	1,139	2009.1117
East SoMa	136 SOUTH PARK AV	3,861	2005.0418
Market Octavia	149 FELL ST	9,900	2009.0422
Rincon Hill	399 FREMONT ST	24,500	2006.0358
Rest Of City	55 9TH ST	267,000	2001.1039
	500 PINE ST	45,610	2000.539
	350 BUSH ST	340,000	2000.541
	231 ELLIS ST	11,000	2002.1077
	220 GOLDEN GATE AV	15,550	2007.0980
	2829 California Street	2,281	2006.1525
	2829 CALIFORNIA ST	2,281	2007.0543
	1401 DIVISADERO ST	74,000	2007.0094
	4614 CALIFORNIA ST	10,943	2002.0605
	2115 TARAVAL ST	1,000	2008.0794
	99 WEST PORTAL AV	4,000	2008.1161
	1415 MISSION ST	2,430	2005.0540
	320-350 PAUL AV	14,400	2007.1125
	115 Steuart Street	57,112	2006.1294
	2231 UNION ST	1,480	2009.0747
	525 HOWARD ST	252,500	2008.0001
5735-5743 MISSION ST	1,788	2006.1227	
NOT ENTITLED PROJECTS			
Market Octavia	1540 MARKET ST	15,281	2009.0159
	746 LAGUNA ST	19,620	2005.1085
Rest Of City	8 Washington Street	1,500	2007.0030
	717 BATTERY ST	56,700	2007.1460
	600 BATTERY ST	218,300	2006.1274
	300 CALIFORNIA ST	195,200	2007.1248
	1100 VAN NESS AVE	244,008	2009.0887
	1634 PINE ST	12,000	2004.0764
	1232 SUTTER ST	500	2007.1147
	3619 BALBOA ST	4,912	2008.1388
	1425 MENDELL ST	5,625	2007.0331
	350 MISSION ST	503,000	2006.1524
	222 02ND ST	393,700	2006.1106
	4014-4016 GEARY BLVD	1,854	2005.0948
	231 ELLIS ST	12,460	2009.0343
	2095 Jerrold Ave	85,472	2009.1153
	425 MISSION ST	1,700,000	2008.0789
	181 FREMONT ST	530,316	2007.0456
50 01ST ST	520,000	2006.1523	

List 3:

**PROJECTS SUBJECT TO INCLUSIONARY AFFORDABLE HOUSING REQUIREMENTS, BY ENTITLEMENT AND PLANNING AREA**

PROJECT ENTITLED			
Planning Area	Project Address	No. of Units	Planning Case Number
Balboa Park	50 PHELAN AV	60	2009.1117
	1150 OCEAN AV	159	2006.0884
	1446 OCEAN AV	13	2008.0538
Central Waterfront	1025 TENNESSEE ST	12	2004.0648
East SoMa	452 TEHAMA ST	20	2005.1026
	750 02ND ST	18	2007.0007
	246 RITCH ST	19	2006.1348
	250 BRANNAN ST	51	2006.0451
	260 05TH ST	151	2007.0690
	900 FOLSOM ST	300	2007.0689
	345 06TH ST	33	2005.0876
Market Octavia	580 HAYES ST	90	2005.0651
	1390 MARKET ST	230	2005.0979
	55 Laguna Street	491	2004.0773
	2210 MARKET ST	20	2006.1409
	4 OCTAVIA ST	49	2008.0569
	335 OAK ST	16	2008.0988
	1 FRANKLIN ST	35	2008.1328
	2001 MARKET ST	72	2008.0550
Mission	953 TREAT AV	5	2007.0981
	3135 24TH ST	12	2005.1076
	3360 20TH ST	6	2005.0370
Rincon Hill	429 BEALE ST	113	2007.1121
	340 FREMONT ST	384	2004.0552
	399 FREMONT ST	432	2006.0358
	425 First Street	340	2003.0029
	105 HARRISON ST	259	2007.1250
Showplace Sq/Potrero Hill	1000 16TH ST	450	2003.0527
Visitacion Valley	95 LELAND AV	8	2006.1082
Rest of the City	2829 CALIFORNIA ST	12	2007.0543
	1127 MARKET ST	98	2008.0288
	48 TEHAMA ST	66	2000.1215
	265 DORLAND ST	5	2008.1171
	220 GOLDEN GATE AV	180	2007.0980
	1266 09TH AV	15	2007.1397
	1169 MARKET ST	970	2002.1179
	1 Stanyan Street	13	2007.0113
	248 OCEAN AV	5	2008.0502
1415 MISSION ST	117	2005.0540	

570 JESSIE ST	47	2005.1018
121 09TH ST	20	2005.0200
1662-1664 Union St.	7	2007.0598
201 Folsom St	806	2000.1073
134-140 NEW MONTGOMERY ST	175	2007.1337
1622 BROADWAY	34	2008.0862
1990 CALIFORNIA ST	22	2008.0419
1285 SUTTER ST	107	2005.0298
973 MARKET ST	100	2007.0368
145 LEAVENWORTH ST	84	2006.0839
2829 California Street	12	2006.1525
2655 BUSH ST	84	2005.1106
636 PLYMOUTH AV	6	2006.0674
723 TAYLOR ST	14	2004.0975
1080 SUTTER ST	35	2006.0431
2299 MARKET ST	18	2008.0430
4801 MISSION ST	6	2008.0286
245 HYDE ST	65	2005.0762
101 EXECUTIVE PARK BL	340	2003.1113
5735-5743 MISSION ST	22	2006.1227
2245 GENEVA AVENUE	9	2006.0864
5498 MISSION ST	6	2009.0812
495 CAMBRIDGE ST	56	2006.0587
832 SUTTER ST	27	2007.0392
1201 PACIFIC AV	8	2007.1059
77 CAMBON DR	195	2006.0680
1741 POWELL ST	17	2007.1117
800 Brotherhood Way	127	2003.0536
1401 CALIFORNIA ST	95	2008.0700
1338 FILBERT ST	8	2009.0412
5735 MISSION ST	20	2009.0057
5050 MISSION ST	61	2006.1213
300 Grant Ave.	66	2004.1245
782-786 ANDOVER ST	6	2006.0825
419 BOWDOIN ST	6	2008.1400
472 ELLIS ST	151	2008.0392
5800 03RD ST	355	2003.0672
3240 Third Street	391	2006.0534
4199 MISSION ST	12	2007.0463
<b>PROJECTS NOT ENTITLED</b>		
Balboa Park	1607-1649 Ocean Ave.	31 2006.0592
East SoMa	537 NATOMA ST	14 2005.0990
	456 CLEMENTINA ST	12 2006.0072
	468 CLEMENTINA ST	25 2005.0424

East SoMa	725-765 Harrison Street	510	2005.0759
	574 NATOMA ST	10	2008.0795
	1044 FOLSOM ST	38	2009.1109
	935 FOLSOM ST	69	2006.0241
	938 HOWARD ST	154	2006.0437
	205 SHIPLEY ST	51	2006.0679
	190 RUSS ST	8	2006.0521
Market Octavia	1540 MARKET ST	180	2009.0159
	299 VALENCIA ST	44	2006.0432
	25 DOLORES ST	46	2006.0848
	2175 MARKET ST	60	2006.1060
	1960-1998 MARKET ST	115	2006.1431
	200 DOLORES ST	13	2008.0992
	401 Grove Street	70	2007.0487
	746 LAGUNA ST	143	2005.1085
	360 OCTAVIA ST	16	2008.0428
Mission	3500 19TH ST	17	2006.1252
	3249 17TH ST	5	2005.1155
	2652 HARRISON ST	30	2006.0054
	1050 VALENCIA ST	16	2007.1457
	2558 MISSION ST	125	2005.0694
	899 VALENCIA ST	18	2004.0891
	411 VALENCIA ST	24	2009.0180
	1875 MISSION ST	60	2004.0674
	2100 MISSION ST	29	2009.0880
	80 JULIAN AV	9	2009.1095
49 JULIAN AV	8	2005.0233	
Rest of the City	1433 BUSH ST	26	2009.1074
	870 HARRISON ST	22	2006.0430
	397 05TH ST	24	2007.1110
	350 08TH ST	416	2007.1035
	651 GEARY ST	40	2008.0981
	436 OFARRELL ST	9	2009.0258
	907 POST ST	6	2004.1005
	153 KEARNY ST	51	2005.0946
	1101 JUNIPERO SERRA BL	8	2008.0212
	231 ELLIS ST	7	2009.0343
	8 Washington Street	170	2007.0030
	3340 SAN BRUNO AV	8	2006.1078
	41 TEHAMA ST	176	2004.0803
	1255- 1275 COLUMBUS AV	20	2008.0723
	1634 PINE ST	250	2004.0764
	950 MASON STREET	160	2008.0081
1789 MONTGOMERY ST	51	2003.1183	
2353 LOMBARD ST	21	2009.1177	

Rest of the City	1020 BROADWAY	6	2006.1202
	120-128 BACHE ST	10	2005.0288
	5 DWIGHT ST	7	2009.0979
	4126 17TH ST	5	2006.1154
	700 36TH AV	6	2009.0653
	5400 GEARY BL	39	2004.0482
	690 STANYAN ST	56	2006.0460
	1282 HAYES ST	8	2008.0432
	4550 MISSION ST	17	2006.0861
	340 11TH ST	20	2005.0525
	350 11TH ST	20	2005.0525
	1645-1661 PACIFIC AV	50	2007.0519
	2 NEW MONTGOMERY ST	125	2005.1101
	2550 VAN NESS AV	109	2005.0474
	651 DOLORES ST	8	2006.0144
	1333 GOUGH ST	231	2005.0679
	706 MISSION ST	220	2008.1084
	1529 PINE ST	113	2006.0383
	1545 PINE ST	113	2006.0383
	1701 09TH AV	6	2009.0129
	50 01ST ST	600	2006.1523
	181 FREMONT ST	140	2007.0456
	1145 MISSION ST	25	2007.0604
3657 SACRAMENTO ST	18	2007.1347	



# Eastern Neighborhoods Citizens Advisory Committee

March 15, 2010

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

**Re: Board File Numbers: 091275/091275-2 Development Impact and In-Lieu Fees;  
091251/091251-2 Development Fee Collection Procedure Administrative Fee; and  
091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary & Jobs  
Housing Linkage Programs**

Dear Ms. Calvillo,

On February 8<sup>th</sup> and March 15<sup>th</sup>, 2010, the Eastern Neighborhoods Citizens Advisory Committee (hereinafter "EN CAC") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinances. The proposed Ordinances would affect the ways impact fees and affordable housing is implemented in the Eastern Neighborhoods. Therefore, consideration of such Ordinances is within the purview of the EN CAC: per Administrative Code Section 10.E.2(e)(1), "the CAC shall be the central community advisory body charged with providing input to City agencies and decision makers with regard to all activities related to implementation of the Eastern Neighborhoods Area Plans." Additionally, "the CAC shall be advisory, as appropriate, to ... the Board of Supervisors".

**At the February 8<sup>th</sup> hearing, the EN CAC passed a resolution (on a 10-1 vote with 7 votes needed for passage) to recommend approval with modifications of the proposed "Development Impact and In-Lieu Fees" [BF 091275/091275-2] and "Development Fee Collection Procedure Administrative Fee" [BF 091251/091251-2] Ordinances. Specifically, the EN CAC passed Resolution 2010-2-2 stating:**

That the Eastern Neighborhoods Citizens Advisory Committee supports the legislation contained in Board of Supervisors file 091275 ("Development Impact and In-Lieu Fees") and 091251 (Development Fee Collection Administrative Fee") with the following modifications:

1. All modifications recommended by the Planning Commission on January 21, 2010,
2. The establishment of a fund of over \$1 million to enable the planning and design of infrastructure in the Eastern Neighborhoods, Market & Octavia, and Balboa Park Plan Areas, and
3. That the amount of money in the aforementioned infrastructure planning fund be tied to the amount of deferred fees, such that as the amount of deferred fees grows so does the amount of funding to do planning.

At the March 15<sup>th</sup> hearing, the EN CAC failed to pass a resolution (on a 6-3 with 7 votes needed for passage) to recommend approval with modifications of the proposed "Affordable Housing Transfer Fee Restriction Alternative for Inclusionary & Jobs Housing Linkage Programs" [BF 091252] Ordinance.

If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Steve Wertheim  
Planning Department  
Staff to the Eastern Neighborhoods Citizens Advisory Committee

cc: Mayor Newsom  
Michael Yarne, OEWD  
Supervisor Sophie Maxwell  
Supervisor David Chiu  
Supervisor Eric Mar  
Eric Quezada, Chair, EN CAC  
Chris Block, Vice-Chair, EN CAC  
John Rahaim, Planning Department  
Ken Rich, Planning Department  
AnMarie Rodgers, Planning Department

091275

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

November 18, 2009

*Received  
12/29/09  
as*

Planning Commission  
1660 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Dear Commissioners:

On **November 3, 2009**, Mayor Newsom introduced the following proposed legislation:

**File: 091275.** Ordinance amending the San Francisco Planning Code by creating Article 4 for development impact fees and development impact requirements that authorize the payment of in-lieu fees; by adding Section 402 to provide that all Planning Code development impact and in-lieu fees will be collected by the Department of Building Inspection prior to issuance of the first building permit or other document authorizing construction of the project, with an option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge on the amount owed that would be deposited into the same fund that receives the fees; by requiring that any in-kind public improvements required in lieu of payment of development fees are implemented prior to issuance of the first certificate of occupancy for the project; by moving Planning Code Sections 139, a portion of 249.33, 313-313.15, 314-314.8, 315-315.9, 318-318.9, 319-319.7, 326-326.8, 327-327.6, and 331-331.6 and Chapter 38 of the San Francisco Administrative Code (Transit Impact Development Fee) to Article 4 and renumbering and amending the sections; adding introductory sections for standard definitions, payment and collection procedures, conditions of approval, dispute resolution and appeal procedures, waivers, credits, notice, lien procedure, and development fee evaluations every five years; by providing for an appeal of technical fee calculation issues to the Board of Appeals rather than the Planning Commission; requiring the Controller to issue an annual Citywide Development Fee Report; deleting duplicative code provisions and using consistent definitions, language and organization throughout; adopting findings, including Section 302 and environmental findings; instructing the publisher to put a note at the original location of the renumbered sections stating that the text of those sections has been moved and providing the new section number.

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation of approval or disapproval. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board



By: Linda Laws, Committee Clerk  
Land Use & Economic Development Committee

Attachment

cc: John Rahaim, Director of Planning  
Larry Badiner, Zoning Administrator  
AnMarie Rodgers, Legislative Affairs  
Tara Sullivan, Legislative Affairs  
Brett Bollinger, Major Environmental Analysis  
Kate Stacy, Deputy City Attorney

*Exempt from review per  
CEQA Section 15273,  
Rules, Fees, Dues, and  
Charges. Marnie Jurrell  
November 20, 2009*



# SAN FRANCISCO PLANNING DEPARTMENT

February 1, 2010

Ms. Angela Calvillo, Clerk  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

Re: Transmittal of Planning Department Case Number 2009.1065T:  
Development Stimulus and Fee Reform

Board File Numbers: 091275/091275-2 Development Impact and In-Lieu Fees;  
091251/091251-2 Development Fee Collection Procedure  
Administrative Fee; and  
091252 Affordable Housing Transfer Fee Restriction Alternative for  
Inclusionary & Jobs Housing Linkage Programs

Planning Commission  
Recommendation: Approval with Modifications

Dear Ms. Calvillo,

On January 21<sup>st</sup>, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance.

The proposed Ordinances would amend the Planning Code, the Building Code and the Administrative Code. Together these proposed Ordinances comprise a legislative package intended to stimulate development and construction in San Francisco. The proposed package seeks to create opportunities to link payment of permitting fees to first construction permit, when loans are more readily available for contractors, while protecting the city's revenue stream of development impact and processing fees, and to alter the collection of affordable housing fees.

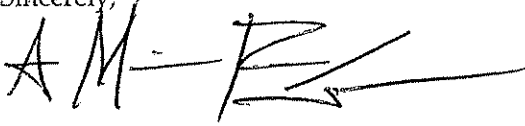
The proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2) and 15273.

At the January 21<sup>st</sup> hearing, the Commission voted to recommend approval with modifications of the proposed Ordinances. Specifically, the Commission took two votes on the three Ordinances. The Commission passed resolution 18015 regarding two of the Ordinances [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee]. The Commission then passed Resolution 18017 on the third Ordinance [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs].

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 FEB - 1 PM 3:47  
SK

Please find attached documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM-Rodgers', with a long horizontal line extending to the right.

AnMarie Rodgers  
Manager of Legislative Affairs

cc: Mayor Newsom  
Michael Yarne, OEWD

Attachments (one copy of the following):

Planning Commission Resolution No.s 18015 and 18017  
Planning Commission Executive Summary for Case No. 2009.1065T  
Exhibit B: Technical Modifications (attached to Resolution 18015)



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18015

HEARING DATE: JANUARY 21, 2010

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

*Project Name:* Development Stimulus and Fee Reform

*Case Number:* 2009.1065T [Board File No.s 09-1251-2 and 09-1275-2]  
*Initiated by:* Mayor Newsom  
Revised Ordinances  
[BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee]  
Introduced December 15, 2009

*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Reviewed By:* Lawrence Badiner, Assistant Director and  
Alicia John-Baptiste, Assistant Director

*90-day Deadline:* March 15, 2010

*Recommendation:* **Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS THREE PROPOSED ORDINANCES INTRODUCED BY MAYOR NEWSOM THAT COMPRISE A LEGISLATIVE PACKAGE INTENDED TO STIMULATE DEVELOPMENT AND CONSTRUCTION IN SAN FRANCISCO. THE PROPOSED PACKAGE SEEKS TO CREATE OPPORTUNITIES TO LINK PAYMENT OF PERMITTING FEES TO FIRST CONSTRUCTION PERMIT, WHEN LOANS ARE MORE READILY AVAILABLE FOR CONTRACTORS, WHILE PROTECTING THE CITY'S REVENUE STREAM OF DEVELOPMENT IMPACT AND PROCESSING FEES.

### PREAMBLE

Whereas, on October 27, 2009 and November 3, 2009, Mayor Newsom introduced three proposed Ordinance under Board of Supervisors (hereinafter "Board") File Numbers 09-1275 Development Impact and In-Lieu Fees, 09-1251 Development Fee Collection Procedure; Administrative Fee, and 09-1252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs.

Whereas, on December 15, 2009 revised ordinances were introduced for the Development Fee Collection Procedure; Administrative Fee and the Development Impact and In-Lieu Fees Ordinances [Board File No.s 09-1251-2 and 09-1275-2].

Whereas, respectively, these proposed Ordinances would

1. **BF 091275-2 Development Impact and In-Lieu Fees** would create a new Article Four in the Planning Code to consolidate fee and in-lieu controls in one article; add Section 402 to provide that all impact fees and in-lieu fees will be collected by DBI prior to issuance of the first construction permit, with the option to defer payment to prior to issuance of the first certificate of occupancy in exchange for a deferral surcharge; provide that physical improvements would be confirmed by the regulating department prior to first certificate of occupancy; and where possible, create standard definitions, procedures, appeals, and reporting standards while deleting duplicative language.

The following fees would be placed in the new Article Four:

- a. Downtown Park Special Fund (Section 139);
  - b. Van Ness and Market Downtown Residential Special Use District (Section 249.33);
  - c. Housing Requirements for Large-Scale Development Projects, Jobs-Housing Linkage Program (Sections 313-313.15);
  - d. Child-Care Requirements for Office and Hotel Developments (Sections 314-314.8);
  - e. Inclusionary Affordable Housing Program (Sections 315-315.9);
  - f. Residential Community Improvements Fund and the SoMa Community Stabilization Fund (Section 318-318.9);
  - g. Housing Requirements for Residential Development Projects in the UMU Zoning Districts of the Eastern Neighborhoods and the Land Dedication Alternative in the Mission NCT District (Section 319-319.7);
  - h. Market and Octavia Community Improvements Fund (Sections 326-326.8);
  - i. Eastern Neighborhoods Public Benefit Fund (Section 327-327.6);
  - j. Balboa Park Community Improvement Fund (Sections 331-331.6);
  - k. Visitacion Valley Community Facilities and Infrastructure Fee (Sections 420 – 420.5.) and
  - l. Transit Impact Development Fee (Chapter 36 of the Administrative Code).
2. **BF 091251-2 Development Fee Collection Procedure; Administrative Fee** would amend the Building Code to establish a procedure for the Department of Building Inspection (DBI) to collect all development impact fees. The proposed Ordinance would ensure that fees are paid prior to the issuance of the first construction permit or allow the project sponsor to defer payment until issuance of first certificate of occupancy in exchange for paying a fee deferral surcharge. These fee procedures would be implemented by a new "Fee Collection Unit" within DBI that would ensure fee payment prior to issuance periods; would require a Project Development Fee Report prior to issuance of building or site permits; and would provide an appeal opportunity to the Board of Appeals.
  3. **BF 091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs** would amend Sections 313.4 and 315.5 and add 313.16 to add an alternative for both the Jobs Housing Linkage Program and the Residential Inclusionary Affordable Housing Program. The new option would allow a project sponsor to defer 33% of its obligation under either program in exchange for recording an Affordable Housing Transfer Fee



Restriction on the property. This fee restriction would require 1% of the value of the property at every future sale to be paid to the Citywide Affordable Housing Fund.

Whereas, In March, 2008, San Francisco published its Citywide Development Impact Fee Study Consolidated Report. The purpose of the Study was to evaluate the overall state, effectiveness, and consistency of the City's impact fee collection process and to identify improvements. Among other things, the Study cited the City's decentralized process as a problem. Centralizing the collection of development impact and in-lieu fees within the Department of Building Inspection and providing for an auditing and dispute-resolution function within DBI will further the City's goals of streamlining the process, ensuring that fees are accurately assessed and collected in a timely manner, informing the public of the fees assessed and collected, and implementing some suggestions in the Consolidated Report.

Whereas, the current economic climate has dramatically slowed the development of new commercial and residential projects in California, including in the City and County of San Francisco. In the construction sector, working hours among the trades have declined between 30% and 40% from a year ago.

Whereas, The Controller's Office has verified that the amount of the reduction in obligations under Jobs-Housing Linkage Program and the Residential Inclusionary Affordable Housing Program and the expected value of the Affordable Housing Transfer Fee are substantially equivalent. The Controller's Office derived the 33% reduction in obligations under the two ordinances by discounting a reasonably conservative estimate of average citywide sales prices, property turnover rates and appreciation rates for the three major types of land use subject to affordable housing fees and exactions in San Francisco: (1) for-sale residential; (2) rental residential; and (3) commercial office.

Whereas, on January 21, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, at that hearing the Commission requested to hear and vote on two of the Ordinances first [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee] and then consider and vote on the third Ordinance [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs].

Whereas, this resolution pertains solely to [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee] and Resolution Number 18017 pertains to [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs].

Whereas, the proposed Ordinances have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15273; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of City department, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinances; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval with modifications of the proposed Ordinances and* adopts the attached Draft Resolution to that effect.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The proposal would result in better gate-keeping with consolidation of fee collection & permit issuance under one agency;
2. Administratively, the proposal represents a dramatic improvement in fee collection that the Planning Department and DBI are both comfortable implementing;
3. The proposal establishes more uniform procedures in a consolidated Article resulting in better understanding for the public, project sponsors and the departments;
4. The proposal would add transparency resulting in an improved process for developers and the public;
5. Most importantly, the revisions to the fee collection process greatly increase the City's ability to collect fees; and
6. Impact fees are traditionally collected when development commences, to insure that the City can build the necessary infrastructure to support new residents and employees within a reasonable amount of time. The proposed deferral program may not reduce the City's ability to provide the necessary infrastructure, however it could cause infrastructure to be staggered, disassociating new development and the related infrastructure. Given the current economic situation, the Commission has evaluated this potential impact to infrastructure funding against the potential benefit of spurring stalled construction.
7. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

**Commerce & Industry Element POLICY 1.1:**

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

Commerce & Industry Element OBJECTIVE 2:

Maintain and enhance a sound and diverse economic base and fiscal structure for the city.

Commerce & Industry Element POLICY 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Recreation and Open Space Element Introductory Text

Maintaining the City's existing open space system is a continuing challenge. Maintenance continues to be a problem due to rising costs and limitations on staffing and equipment. In addition, many of the parks are old and both park landscapes and recreation structures are in need of repair or renovation. Heavily used parks and recreation facilities require additional maintenance. However, the number of recreation facilities has increased and their use intensified, often without a corresponding increase in the budget necessary to maintain facilities and offer the desired recreation programs.

Recreation and Open Space Element POLICY 2.1

Provide an adequate total quantity and equitable distribution of public open spaces throughout the City.

Recreation and Open Space Element POLICY 2.7

Acquire additional open space for public use.

Recreation and Open Space Element POLICY 4.4

Acquire and develop new public open space in existing residential neighborhoods, giving priority to areas which are most deficient in open space.

Community Facilities Element Objective 3

ASSURE THAT NEIGHBORHOOD RESIDENTS HAVE ACCESS TO NEEDED SERVICES AND A FOCUS FOR NEIGHBORHOOD ACTIVITIES.

Community Facilities Element Policy 3.1

Provide neighborhood centers in areas lacking adequate community facilities.

Community Facilities Element Policy 3.4

Locate neighborhood centers so they are easily accessible and near the natural center of activity.

Community Facilities Element Policy 3.6

Base priority for the development of neighborhood centers on relative need.

Community Facilities Element Objective 8

ASSURE THAT PUBLIC SCHOOL FACILITIES ARE DISTRIBUTED AND LOCATED IN A MANNER THAT WILL ENHANCE THEIR EFFICIENT AND EFFECTIVE USE.

**Transportation Element POLICY 1.1:**

Involve citizens in planning and developing transportation facilities and services, and in further defining objectives and policies as they relate to district plans and specific projects.

**Air Quality Element POLICY 3.1**

Take advantage of the high density development in San Francisco to improve the transit infrastructure and also encourage high density and compact development where an extensive transportation infrastructure exists.

**Air Quality Element POLICY 3.4**

Continue past efforts and existing policies to promote new residential development in and close to the downtown area and other centers of employment, to reduce the number of auto commute trips to the city and to improve the housing/job balance within the city.

**Air Quality Element POLICY 3.6**

Link land use decision making policies to the availability of transit and consider the impacts of these policies on the local and regional transportation system.

**Urban Design Element POLICY 3.9**

Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

8. **The Commission supports the following modifications to the revised Ordinances as introduced on December 15, 2009:**

- Modification of the proposed Fee Deferral Surcharge to a blended rate based on 50% of the City's floating investment rate and 50% of a floating construction cost index as determined by the Controller's Office.
- Clarification of the limited scope of the Board of Appeals jurisdiction.
- Creation of a mechanism to provide for universal indexing of fees for cost of inflation across all fee programs.
- Ensure fee waiver opportunities are not increased through the proposal. Under current controls, each existing fee has its own unique "fee waiver" procedures.

9. **The Commission is recommending the following modifications to the proposed Ordinances:**

1. Clarify that this new ability to defer fees is offered only to those projects that have not yet paid development impact fees. Since the adoption of the Area Plans, City agencies have been working to plan and build infrastructure for new development. Collected impact fees have been programmed and are needed to complete planned infrastructure. The administrative burden of providing *fee refunds* to then allow *fee deferrals* is disproportionate to the relative benefit to the projects that fall within in this category. Further, DBI has advised that offering refunds would be administratively infeasible.
  
2. Correct the ordinance to ensure that each of the effective dates for individual impact fee programs are the original date of those programs and not the effective date of this new ordinance. This change would facilitate administration of the various fee programs, especially in the event that refunds are requested. The original effective dates that should be noted in Article Four are as follows:
  - Section 249.33 Van Ness and market Downtown Residential Special Use District FAR Bonus & the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Program both have an original effective date of 5/30/2008;
  - Section 313 Affordable Housing Job/Housing Linkage Fee has an effective date of 3/28/1996;
  - Section 315 Market & Octavia Affordable Housing Fee & Section 326.3-6 Market & Octavia Community Benefits Fee both have an effective date of 5/30/2008;
  - Section 318 Rincon Hill Community Infrastructure Impact Fee & SoMa Community Stabilization Fee both have effective date of 8/19/2005;
  - Section 319.7 Visitacion Valley Community Facilities and Infrastructure Fee has an effective date of 11/18/2005;
  - Section 327 Eastern Neighborhoods (Mission) has an effective date of 12/19/2008;
  - Section 331 Balboa Park Fee has an effective date of 4/17/2009; and
  - Administrative Code Chapter 38-Transit Impact Development Fee was originally enacted 1981 and a major revision became effective in 2004. Both of these dates have implications to pipeline projects and should be maintained.

For the remaining fees (Section 139 Downtown Park Fee, Section 149 Downtown C-3 Artwork, Section 314 Childcare, Section 315 Inclusionary Housing Fee, State Educational Code Section 17620 School Impact Fee, Administrative Code Sewer Connection Fee and Wastewater Capacity Charge), the Department requests that OWED or the City Attorney research the original effective date for inclusion or in the event that cannot be determined use a de facto effective date of 1985 to ensure that no pipeline projects are exempted from fees.
  
3. Maintain SFMTA's role as "implementer" of the TIDF. This fund has been implemented by SFMTA with consultation of the Planning Department, and should remain so. Any changes which would place planning staff into a mediator role between a project sponsor and the assessment of fees or implementation of the program should avoided. The proposed Ordinance establishes that "MTA is empowered to adopt such rules, regulations, and administrative procedures as it deems necessary to implement this Section 411.1 et seq. In the event of a conflict between any MTA rule, regulation or procedure and this Section 411.1 et

seq., this Section ordinance shall prevail.” The Department would request that the City Attorney explore adding further text to this Section to exempt this Section from the typical authority conveyed to the Zoning Administrator.

4. **Remove changes to procedures for in-kind contributions until the changes have been vetted with the agencies responsible for monitoring each in-kind contribution.** While the fee amendments contained in Article Four currently exist in the Planning Code and/or the Administrative Code, other agencies are responsible for the administration and monitoring of these contributions. In-kind provisions such as childcare or street-improvements must meet specifications that only DCYF or DPW are qualified to evaluate and should not be the responsibility of the Planning Department.
5. **Include all fee requirements in the new process.** Currently the proposal does not include the two alternative means of satisfying the open space requirement in South of Market and Eastern Neighborhoods by paying in-lieu fees identified in Section 135.3 (d) and 135.3 (e) as well as the payment in cases of a variance or exception to the open space requirement in Eastern Neighborhoods required by Section 135(j). Section 143, Street Tree Requirements, requires a type of physical improvement that according to Article 16 of the Public Works Code can be satisfied as a fee payment when utilities or other barriers prevent planting of trees. DBI’s Fee Unit should be made aware of the street tree requirement at submittal for inclusion in the “Project Development Fee Report”. The required planting or payment of the in-lieu fee should be confirmed prior to first certificate of occupancy.
6. **Provide further consolidation of fee “definitions”.** The proposed Ordinance strives to consolidate fee-specific definitions to the greatest degree possible. While the revised Ordinance successfully added further consolidation of definitions, the current draft still contains a large amount of definitions that reside outside of the universal fee definition section in Section 401. The Department provided the Commission with proposed consolidation of additional definitions at the January 21<sup>st</sup>, 2010 hearing. The additional proposed definition consolidations are attached to this resolution as Exhibit B Technical Modifications.
7. **Include a legislative end-date for fee deferrals after three years.** As this legislative package is intended to counter the difficult economic times, an end-date should be added where the City would no longer allow the deferral of fees. The Planning Commission considered this issue at the hearing and recommended that the proposed infrastructure fee deferral automatically sunset after three years.
8. **Research additional mechanisms to secure “seed money” to begin infrastructure planning and avoid delays during the deferral period.** The Commission is interested in preserving a coordinated provision of new infrastructure to support new development. While the full impact fee charge is not needed to begin infrastructure planning, a small fraction of that fee could help avoid potential delay in the funding and timing of capital improvements

associated with the deferred impact fees. The Commission urges additional research of this topic.

10. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would allow additional neighborhood serving retail and personal services.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance would not affect existing residential character or diversity of our neighborhoods.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*According to the Mayor's Office of Housing, "After numerous discussions with interested parties and analysis of applicable data, the Mayor's Office of Housing believes this proposal provides an excellent opportunity in the midst of the current economic climate; accelerating quality development and its associated revenues while creating a lasting impact on San Francisco's chronic affordable housing crisis."*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake would not be impeded by the*

*proposed Ordinance.*

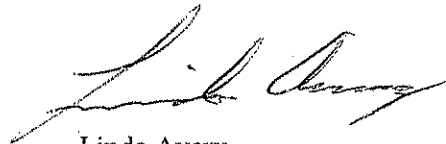
- G) That landmark and historic buildings will be preserved:

*Landmarks and historic buildings would be unaffected by the proposed amendments.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The City's existing parks and open space and their access to sunlight and vistas would not be affected by the proposed Ordinance.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on January 21, 2010.



Linda Avery  
Commission Secretary

AYES: Antonini, Borden, Lee and Miguel

NAYS: Moore, Sugaya, and Olague

ABSENT:

ADOPTED: January 21, 2010



**Exhibit B: Technical Modifications/ Definition Consolidation**

CASE NO. 2009.1065T, Development Stimulus and Fee Reform

**Proposed Additions highlighted and double underlined**

**~~Proposed Deletions highlighted and double cross through~~**

SEC. 401. DEFINITIONS. (a) In addition to the specific definitions set forth elsewhere in this Article, the following definitions shall govern interpretation of this Article:

(a) "Balboa Park Community Improvements Fund" shall mean the fund that all fee revenue the City collects from the Balboa Park Impact Fee.

(b) "Balboa Park Community Improvements Program" shall mean the program intended to implement the community improvements identified in the Balboa Park Area Plan, as articulated in the Balboa Park Community Improvements Program Document (San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. \_\_\_\_\_).

(c) "Balboa Park Impact Fee" shall mean the fee collected by the City to mitigate impacts of new development in the Balboa Park Program Area as described in the Findings in Section 331.1.

(d) "Balboa Park Community Improvements Program" shall mean the program intended to implement the community improvements identified in the Balboa Park Area Plan, as articulated in the Balboa Park Community Improvements Program Document (San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. \_\_\_\_\_).

(e) "Balboa Park Program Area" shall mean the Balboa Park Plan Area in Figure 1 of the Balboa Park Station Area Plan of the San Francisco General Plan.

(1) "Board" or "Board of Supervisors." The Board of Supervisors of the City and County of San Francisco

(f) "Child-care facility" shall mean a child day-care facility as defined in California Health and Safety Code Section 1596.750.

(2) "City" or "San Francisco." The City and County of San Francisco.

(3) "Commercial use." Any structure or portion thereof intended for occupancy by retail or office uses that qualify as an accessory use, as defined and regulated in Sections 204 through 204.5 of this Code.

(4) "Commercial development project." Any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any occupied floor area of commercial use; provided, however, that for projects that solely comprise an addition to an existing structure which would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Article shall only apply to the new occupied square footage.

(5) "Commission" or "Planning Commission." The San Francisco Planning Commission.

(g) "Community facilities" shall mean all uses as defined under Section 209.4(a) and 209.3(d) of this Code.

(6) "Condition of approval" or "Conditions of approval." A condition or set of written conditions imposed by the Planning Commission or another permit-approving or issuing City agency or appellate body to which a project applicant agrees to adhere and fulfill when it receives approval for the construction of a development project subject to this Article.

(7) "DBI." The San Francisco Department of Building Inspection.

(8) "Department" or "Planning Department." The San Francisco Planning Department or the Planning Department's designee, including the Mayor's Office of Housing and other City agencies or departments.

(i) "Designated affordable housing zones", for the purposes of implementing the Eastern Neighborhoods Public Benefits Fund shall mean the Mission NCT defined in Section 736 and the Mixed Use Residential District defined in Section 841.

(9) "Development fee." Either a development impact fee or an in-lieu fee. It shall not include a fee for service or any time and material charges charged for reviewing or processing permit applications.

(10) "Development Fee Collection Unit" or "Unit." The Development Fee Collection Unit at DBI.

(11) "Development impact fee." A fee imposed on a development project as a condition of approval to mitigate the impacts of increased demand for public services, facilities or housing caused by the development project that may or may not be an impact fee governed by the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

(12) "Development impact requirement." A requirement to provide physical improvements, facilities or below market rate housing units imposed on a development project as a condition of approval to mitigate the impacts of increased

**Exhibit B: Technical Modifications/ Definition Consolidation**

CASE NO. 2009.1065T, Development Stimulus and Fee Reform

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demand for public services, facilities or housing caused by the development project that may or may not be governed by the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

(13) "Development project." mean any change of use within an existing structure, addition to an existing structure, or new construction, which includes any occupied floor area. ~~A project that is subject to a development impact or in-lieu fee or development impact requirement.~~

(14) "Director." The Director of Planning or his or her designee.

(15) "DPW." The Department of Public Works.

(l) "Eastern Neighborhoods Public Benefits Program" shall mean the program intended to implement the community improvements identified in the four Area Plans affiliated with the Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program Document (San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. 081155).

(m) "Eastern Neighborhoods Impact Fee" shall mean the fee collected by the City to mitigate impacts of new development in the Eastern Neighborhoods Program Area as described in the Findings in Section 327.1.

(n) "Eastern Neighborhoods Public Benefit Fund" shall mean the fund into which all fee revenue collected by the City from the Eastern Neighborhoods Impact Fee.

(o) "Eastern Neighborhoods Public Benefits Program" shall mean the program intended to implement the community improvements identified in the four Area Plans affiliated with the Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program Document (San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. 081155).

(p) "Eastern Neighborhoods Program Area" shall mean the Eastern Neighborhoods Plan Area in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco General Plan.

(16) "Entertainment development project." Any new construction, addition, extension, conversion, or enlargement, or combination thereof, of an existing structure which includes any gross square feet of entertainment use.

(17) "Entertainment use." Space within a structure or portion thereof intended or primarily suitable for the operation of a nighttime entertainment use as defined in Section 102.17 of this Code, a movie theater use as defined in Sections 790.64 and 890.64 of this Code, an adult theater use as defined in Sections 790.36 and 890.36 of this Code, any other entertainment use as defined in Sections 790.38 and 890.37 of this Code, and, notwithstanding Section 790.38 of this Code, an amusement game arcade (mechanical amusement devices) use as defined in Sections 790.4 and 890.4 of this Code. Under this Article, "entertainment use" shall include all office and other uses accessory to the entertainment use, but excluding retail uses and office uses not accessory to the entertainment use.

(18) "First certificate of occupancy." Either a temporary certificate of occupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section 109A, whichever is issued first.

(19) "First construction document." As defined in Section 107A.13.1 of the San Francisco Building Code.

(20) "Hotel development project." Any new construction, addition, extension, conversion, or enlargement, or combination thereof, of an existing structure which includes any gross square feet of hotel use.

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

(s) "Improvements Fund" shall mean the fund into which all revenues are collected by the City for each Program Area's impact fees.

(t) "In-Kind Agreement" shall mean an agreement acceptable in form and substance to the City Attorney and the Director of Planning between a project sponsor and the Planning Commission subject to the approval of the Planning Commission in its sole discretion to provide a specific set of community improvements, at a specific phase of construction, in lieu of contribution to the relevant Improvements Fund. The In-Kind Agreement shall also mandate a covenant of the project sponsor to reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with the In-Kind Agreement. The City also shall require the project sponsor to provide a letter of credit or other

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instrument, acceptable in form and substance to the Planning Department and the City Attorney, to secure the City's right to receive payment as described in the preceding sentence.

(22) "In lieu fee." A fee paid by a project sponsor in lieu of complying with a requirement of this Code and that is not a development impact fee governed by the Mitigation Fee Act.

(u) "Infrastructure" shall mean open space and recreational facilities; public realm improvements such as pedestrian improvements and streetscape improvements; public transit facilities; and community facilities such as libraries, childcare facilities, and community centers.

(v) "Low Income" shall mean, for purposes of this ordinance, up to 80% of median, family income for the San Francisco PMSA, as calculated and adjusted by the United States Department of Housing and Urban Development (HUD) on an annual basis, except that as applied to housing-related purposes such as the construction of affordable housing and the provision of rental subsidies with funds from the SOMA Stabilization Fund established in Section 318.7, it shall mean up to 60% of median family income for the San Francisco PMSA, as calculated and adjusted by the United States Department of Housing and Urban Development (HUD) on an annual basis.

(w) "Market and Octavia Community Improvements Fund" shall mean the fund into which all fee revenue collected by the City from the Market and Octavia Community Improvements Impact Fee.

(x) "Market and Octavia Community Improvements Impact Fee" shall mean the fee collected by the City to mitigate impacts of new development in the Market & Octavia Program Area as described in the Findings in Section 326.1.

(y) "Market and Octavia Community Improvements Program" shall mean the program intended to implement the community improvements identified in the Market and Octavia Area Plan, as articulated in the Market and Octavia Community Improvements Program Document (San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. 071157).

(z) "Market and Octavia Program Area" shall mean the Market and Octavia Plan Area in Map 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan, which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown Residential Special Use District (VMDRSUD).

(23) "MOCD." The Mayor's Office of Community Development.

(24) "MOH." The Mayor's Office of Housing.

(25) "MTA." The Municipal Transportation Agency.

(cc) "Net addition" shall mean the total amount of gross floor area (as defined in Planning Code Section 102.9) to be occupied by a development project, less the gross floor area existing in any structure demolished or retained as part of the proposed development project that had been occupied by, or primarily serving, any residential, non-residential, or PDR use for five years prior to Planning Commission or Planning Department approval of the development project subject to this Section, or for the life of the structure demolished or retained, whichever is shorter.

(dd) "Non-residential use" shall mean any structure or portion thereof intended for occupancy by retail, office, commercial or other nonresidential uses defined in Planning Code Section 209.3, 209.8, 217, 218, 219 and 221; except that residential components of uses defined in Section 209.3 (a)–(c) and (g) – (j) shall be defined as a "residential use" for purposes of this Section. For the purposes of this section, non-residential use shall not include PDR and publicly owned and operated community facilities.

(26) "Office development project." Any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any gross floor area of office use

(27) "Office use." Space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to, the following: Professional; banking; insurance; management; consulting; technical; sales; and design; and the non-accessory office functions of manufacturing and warehousing businesses; all uses encompassed within the definition of "office" in Section 219 of this Code; multimedia, software, development, web design, electronic commerce, and information technology; all uses encompassed within the definition of "administrative services" in Section 890.106 of this Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting only those uses which are limited to the Chinatown Mixed Use District.

(ee) "PDR use" shall mean those uses contained in Sections 220, 222, 223, 224, 225, and 226 of the Planning Code.

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(ff) "Replacement" shall mean the total amount of gross floor area (as defined in Planning Code Section 102.9) to be demolished and reconstructed by a development project, given that the space demolished had been occupied by, or primarily serving, any residential, non-residential, or PDR use for five years prior to Planning Commission or Planning Department approval of the development project subject to this Section, or for the life of the structure demolished or retained, whichever is shorter.

(28) "Research and Development ("R&D") project." Any new construction, addition, extension, conversion, or enlargement, or combination thereof, of an existing structure which includes any gross square feet of R&D use.

(29) "Research and development use." Space within any structure or portion thereof intended or primarily suitable for basic and applied research or systematic use of research knowledge for the production of materials, devices, systems, information or methods, including design, development and improvement of products and processing, including biotechnology, which involves the integration of natural and engineering sciences and advanced biological techniques using organisms, cells, and parts thereof for products and services, excluding laboratories which are defined as light manufacturing uses consistent with Section 226 of this Code.

~~(30) "Residential development project." Any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any occupied floor area of residential use; provided, however, that for projects that solely comprise an addition to an existing structure which would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Article shall only apply to the new occupied square footage.~~

(31) "Residential use." Any any structure or portion thereof intended for occupancy by uses as defined in Sections 209.1, 790.88, and 890.88 of the Planning Code as relevant for the subject zoning district or containing group housing as defined in Section 209.2(a)-(c) of the Planning Code and residential components of institutional uses as defined in Section 209.3 (a)-(c) and (g) - - (j) of the Planning Code.

~~type of use containing dwellings as defined in Section 209.1 of this Code or containing group housing as defined in Section 209.1(a)-(c), Section 790.88, and Section 890.88 of this Code, as relevant for the subject zoning district. It shall include any use which qualifies as an accessory use as defined and regulated in Sections 204 through 204.5.~~

(32) "Retail development project." Any new construction, addition, extension, conversion, or enlargement, or combination thereof, of an existing structure which includes any gross square feet of retail use.

(33) "Retail use." Space within any structure or portion thereof intended or primarily suitable for occupancy by persons or entities which supply commodities to customers on the premises including, but not limited to, stores, shops, restaurants, bars, eating and drinking businesses, and the uses defined in Sections 218 and 220 through 225 of this Code, and also including all space accessory to such retail use.

(hh) "Rincon Hill Community Improvements Fund" shall mean the fund into which all fee revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee.

(ii) "Rincon Hill Community Infrastructure Impact Fee" shall mean the fee collected by the City to mitigate impacts of new development in the Rincon Hill Program Area as described in the Findings in Section 318.1.

(jj) "Rincon Hill Program Area" shall mean those districts identified as the Rincon Hill Downtown Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

(kk) "SOMA" shall mean the area bounded by Market Street to the north, Embarcadero to the east, King Street to the south and South Van Ness and Division to the west.

(ll) "SOMA Community Stabilization Fee" shall mean the fee collected by the City to mitigate impacts of new development in the Rincon Hill Program on the residents and businesses of SOMA, as described in the Findings in Section 318.1.

(mm) "SOMA Community Stabilization Fund" shall mean the fund into which all fee revenue collected by the City from the SOMA Community Stabilization Fee.

(34) (34) "Sponsor" or "project sponsor." An applicant seeking approval for construction of a development project subject to this Article, such applicant's successor and assigns, and/or any entity which controls or is under common control with such applicant.

"Treasurer" shall mean the Treasurer for the City and County of San Francisco.

(pp) "Waiver Agreement" shall mean an agreement acceptable in form and substance to the Planning Department and the City Attorney, under which the City agrees to waive all or a portion of the Community Improvements Impact Fee.

SEC. 411.2. SEC. 38.4. DEFINITIONS. (a) In addition to the definitions set forth in Section 401 of this Article, For the purposes of this Chapter, the following definitions shall govern interpretation of Section 411.1 et seq. apply:

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- ~~(1) A.~~ Accessory Use. A related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to any such use and is located on the same lot as the principal or conditional use.
- ~~(2) B.~~ Base Service Standard. The relationship between revenue service hours offered by the Municipal Railway and the number of automobile and transit trips estimated to be generated by certain non-residential uses, expressed as a ratio where the numerator equals the average daily revenue service hours offered by MUNI, and the denominator equals the daily automobile and transit trips generated by non-residential land uses as estimated by the TIDF Study or updated under Section ~~411.5 38.7~~ of this Chapter.
- ~~(3) C.~~ Base Service Standard Fee Rate. The ~~TIDF transit impact development fee~~ that would allow the City to recover the estimated costs incurred by the Municipal Railway to meet the demand for public transit resulting from new development in the economic activity categories for which the fee is charged, after deducting government grants, fare revenue, and costs for non-vehicle maintenance and general administration.
- ~~D.~~ ~~Board. The Board of Supervisors of the City and County of San Francisco.~~
- ~~E.~~ ~~Certificate of Final Completion and Occupancy. A certificate of final completion and occupancy issued by any authorized entity or official of the City, including the Director of the Department of Building Inspection, under the Building Code.~~
- ~~F.~~ ~~City or San Francisco. The City and County of San Francisco.~~
- ~~(4) G.~~ Covered Use. Any use subject to the TIDF.
- ~~(5) H.~~ Cultural/Institution/Education (CIE). An economic activity category that includes, but is not limited to, schools, as defined in subsections (g), (h), and (i) of Section 209.3 of the ~~Planning this Code~~ and subsections (f)-(i) of Section 217 of ~~this the Planning Code~~; child care facilities, as defined in subsections (e) and (f) of Section 209.3 of ~~this the Planning Code~~ and subsection (e) of Section 217 of ~~this the Planning Code~~; museums and zoos; and community facilities, as defined in Section 209.4 of ~~this the Planning Code~~ and subsections (a)-(c) of Section 221 of ~~this the Planning Code~~.
- ~~(6) I.~~ Director ~~of MTA or MTA Director~~. The Director of Transportation of the MTA, or his or her designee.
- ~~(7) J.~~ Economic Activity Category. One of the following six categories of nonresidential uses: Cultural/Institution/Education (CIE), Management, Information and Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair (PDR), Retail/Entertainment, and Visitor Services.
- ~~(8) K.~~ Gross Floor Area. The total area of each floor within the building's exterior walls, as defined in Section 102.9 of ~~this the San Francisco Planning Code~~, except that for purposes of determining the applicability of the TIDF, the exclusion from this definition set forth in Section 102.9(b)(12) of ~~this Code~~ shall not apply.
- ~~(9) L.~~ Gross Square Feet of Use. The total square feet of gross floor area in a building and/or space within or adjacent to a structure devoted to all covered uses, including any common areas exclusively serving such uses and not serving residential uses. Where a structure contains more than one use, areas common to two or more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary space included in gross floor area that are not exclusively assigned to one use shall be apportioned among the two or more uses in accordance with the relative amounts of gross floor area, excluding such space, in the structure or on any floor thereof directly assignable to each use.
- ~~(10) M.~~ Management, Information and Professional Services (MIPS). An economic activity category that includes, but is not limited to, office use as defined in Section ~~313.1(35) 413.1(24)~~ of ~~this the Planning Code~~; medical offices and clinics, as defined in Section 890.114 of ~~this the Planning Code~~; business services, as defined in Section 890.111 of ~~this the Planning Code~~, Integrated PDR, as defined in Section 890.49 of the Planning Code, and Small Enterprise Workspaces, as defined in Section 227(t) of ~~this the Planning Code~~.
- ~~(11) N.~~ Medical and Health Services. An economic activity category that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and 217(a) of ~~this the Planning Code~~; animal services, as defined in subsections (a) and (b) of Section 224 of ~~this the Planning Code~~; and social and charitable services, as defined in subsection (d) of Section 209.3 of ~~this the Planning Code~~ and subsection (d) of Section 217 of ~~this the Planning Code~~.
- ~~(12) O.~~ Municipal Railway; MUNI. The public transit system owned by City and under the jurisdiction of the Municipal Transportation Agency.
- ~~(13) P.~~ ~~Municipal Transportation Agency; MTA. The agency of City created under Article 8A of the San Francisco Charter.~~
- ~~(14) Q.~~ Municipal Transportation Agency Board of Directors; MTA Board. The governing board of the MTA.
- ~~(15) R.~~ New Development. Any new construction, or addition to or conversion of an existing structure under a building or site permit issued on or after September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the case of mixed use development that includes residential development, the term "new development" shall refer to only the non-residential portion of such development. "Existing structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.
- ~~S.~~ ~~Office Space Development Fee; OSDF. A fee imposed under Section 38.3-1 of this Chapter.~~
- ~~T.~~ ~~Planning Code. The Planning Code of the City and County of San Francisco, as it may be amended from time to time.~~
- ~~(16) U.~~ ~~Production/Distribution/Repair (PDR). An economic activity category that includes, but is not limited to, manufacturing and processing, as defined in Section 226 of this the Planning Code; those uses listed in Section 222 of this the Planning Code; automotive services, as defined in Section 223(a) (c) of this the Planning Code; arts activities and spaces, as defined in Section 102.2 of this the Planning Code; and research and development, as defined in Section 313.1(42) 401(27) of this Article the Planning Code.~~
- ~~(17) V.~~ Residential. Any type of use containing dwellings as defined in Section 209.1 of ~~this the Planning Code~~ or containing group housing as defined in Section 209.2(a) (c) of ~~this the Planning Code~~.
- ~~(18) W.~~ Retail/Entertainment. An economic activity category that includes, but is not limited to, retail use, as defined in Section 218 of ~~this the Planning Code~~; entertainment use, as defined in Section ~~313.1(15) 401(16)~~ of ~~this Article the Planning Code~~; massage establishments, as defined in Section 218.1 of ~~this the Planning Code~~; laundering, and cleaning and pressing, as defined in Section 220 of ~~this the Planning Code~~.

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~~(19) X.~~ Revenue Service Hours. The number of hours that the Municipal Railway provides service to the public with its entire fleet of buses, light rail (including streetcars), and cable cars.

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

~~(20) Z.~~ TIDF Study. The study commissioned by the San Francisco Planning Department and performed by Nelson/Nygaard Associates entitled "Transit Impact Development Fee Analysis--Final Report," dated May 2001, including all the Technical Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained in Board of Supervisors File No. 040141.

~~(21) AA.~~ Transit Impact Development Fee; TIDF. The development fee that is the subject of Section 411.1 et seq. this Chapter.

~~BB.~~ Treasurer. Treasurer of the City and County of San Francisco.

~~(22) CC.~~ Trip Generation Rate. The total number of automobile and Municipal Railway trips generated for each 1,000 square feet of development in a particular economic activity category as established in the TIDF Study, or pursuant to the five-year review process established in Section 411.5 38.7 of this Chapter.

~~(23) DD.~~ Use. The purpose for which land or a structure, or both, are legally designed, constructed, arranged or intended, or for which they are legally occupied or maintained, let or leased.

~~(24) EE.~~ Visitor Services. An economic activity category that includes, but is not limited to, hotel use, as defined in Section ~~313.1(48)~~ 401(20) of ~~this Article the Planning Code~~; motel use, as defined in subsections (c) and (d) of Section 216 of ~~this the Planning Code~~; and time-share projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

SEC. 418 (formerly Section 318). RINCON HILL COMMUNITY IMPROVEMENTS FUND AND SOMA COMMUNITY STABILIZATION FUND IN DTR DISTRICTS.

Sections ~~418.2 through 418.7 318.1 318.9~~, hereafter referred to as Section 418.1 et seq., set forth the requirements and procedures for the ~~Downtown Residential Rincon Hill~~ Community Improvements Fund and the SOMA Community Stabilization Fund.

SEC. 418.2. 318.2. DEFINITIONS. (a) In addition to See the definitions set forth in Section 401 of this Article  
~~The following definitions shall govern interpretation of this ordinance Section 418.1 et seq.~~

~~(1) (a) "Child care facility." shall mean a 4 child day care facility as defined in California Health and Safety Code Section 1596.750.~~

~~(b) "DBI" shall mean the Department of Building Inspection.~~

~~(c) "DPW" shall mean the Department of Public Works.~~

~~(d) "First certificate of occupancy" shall mean either a temporary certificate of occupancy or a Certificate of Final Completion and Occupancy, as defined in San Francisco Building Code Section 109, whichever is issued first.~~

~~(2) (c) "Infrastructure." shall mean street paving, crosswalks, signs, medians, bulbouts, sidewalks, trees, parks and open space, day care centers, libraries or library materials, and community centers.~~

~~(2) (f) "Infrastructure fee." shall mean a 4 monetary contribution based upon the cost to provide infrastructure under this program.~~

~~(4) (g) "Low income." shall mean, fFor purposes of Section 418 et seq. this ordinance, up to 80% of median family income for the San Francisco PMSA, as calculated and adjusted by the United States Department of Housing and Urban Development (HUD) on an annual basis, except that as applied to housing-related purposes such as the construction of affordable housing and the provision of rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.6 318.7 it shall mean up to 60% of median family income for the San Francisco PMSA, as calculated and adjusted by the United States Department of Housing and Urban Development (HUD) on an annual basis.~~

~~(h) "MOCD" shall mean the Mayor's Office of Community Development.~~

~~(i) "MOH" shall mean the Mayor's Office of Housing.~~

~~(5) (f) "Net addition of occupiable square feet of residential use." shall mean oOccupied floor area, as defined in Section 102.10 of this Code, including bathrooms provided as part of dwelling units, to be occupied by or primarily serving residential use excluding common areas such as hallways, fitness centers and lobbies, less the occupied floor area in any structure demolished or rehabilitated as part of the proposed residential development project which occupied floor area was used primarily and continuously for residential use and was not necessary to any use other than residential use for at least five years prior to Planning Department approval of the residential development project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

~~(6) (f) "Program." shall mean tThe Downtown Residential Community Improvements Neighborhood Program.~~

~~(7) (f) "Program Area." shall mean tThose districts identified as Downtown Residential (DTR) Districts in the Planning Code and on the Zoning Maps.~~

~~(m) "Residential development project" shall mean any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any occupied floor area of residential use;~~



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~~provided, however, that for projects that solely comprise an addition to an existing structure which would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Section shall only apply to the new occupied square footage.~~

~~(n) "Residential use." shall mean any structure or portion thereof intended for occupancy by uses as defined in Section 890.88 of this Code and shall not include any use which qualifies as an accessory use as defined and regulated in Sections 204 through 204.5.~~

~~(8) (c) "SOMA." shall mean ~~the area bounded by Market Street to the north, Embarcadero to the east, King Street to the south and South Van Ness and Division to the west.~~~~

~~(p) "Sponsor" shall mean an applicant seeking approval for construction of a residential development project subject to this Section and such applicant's successors and assigns.~~

~~(2) (g) "Waiver Agreement." means ~~a~~ an agreement acceptable in form and substance to the Planning Department and the City Attorney, under which the City agrees to waive all or a portion of the Community Improvements Impact Fee, conditioned upon the project sponsor's covenant to make a good faith effort to secure the formation of a Community Facilities (Mello-Roos) District, if such a district has not already been successfully formed, and to take all steps necessary to support the construction of a portion of the improvements described in Sections ~~418.6-418.6~~ (the "CFD Improvements") using the proceeds of one or more series of special tax bonds or moneys otherwise made available by such a district ("CFD Funds"). Such agreement shall include a specific description of the CFD Improvements and a specific date for the commencement of such improvements. Such agreement shall also provide that the project sponsor shall pay the full amount of the waived Community Improvements Impact Fee in the event that CFD Funds are not received in amounts necessary to commence construction of the CFD Improvements on the stated commencement date. The City also shall require the project sponsor to provide a letter of credit or other instrument to secure the City's right to receive payment as described in the preceding sentence.~~

SEC. 418.3 318.3. APPLICATION.

(a) ~~Application. Section 418.1 et seq. shall apply to any development project located in the Rincon Hill DTR Community Improvements Program Area, which includes all properties zoned DTR and The Downtown Residential Community Improvements Neighborhood Program is hereby established and shall be implemented through district specific community improvements funds which apply in the following downtown residential areas: is hereby established.~~

(i) ~~Properties identified as "Residential Mixed Use" in Map 3 (Land Use Plan) of the Rincon Hill Area Plan of the San Francisco General Plan.~~

(b) ~~Amount of Fees.~~

(1) ~~The Rincon Hill Community Improvement Impact Fee shall be \$11.00 per net addition of occupiable square feet of residential use in any development project with a residential use in any development project with a residential use located within the Program Area; and~~

(2) ~~The SOMA Community Stabilization Fee shall be \$14.00 per net addition of occupiable square feet of residential use in any development project with a residential use within the Program Area.~~

(d) ~~The Community Improvements Infrastructure Impact Fee shall be revised effective January 1st of the year following the effective date of Section 418.1 et seq. this ordinance and on January 1st each year thereafter by the percentage increase or decrease in the construction cost of providing these improvements.~~

(c) (e) ~~Option for In-Kind Provision of Community Improvements Infrastructure and Fee Credits. The Planning Commission may shall reduce the Community Improvements Infrastructure Impact Fee or SOMA Stabilization Fee owed described in (b) above for specific residential development projects proposals in cases where the Director has recommended approval and the project sponsor has entered into an In-Kind Improvements Agreement with the City. In-kind community improvements may only be accepted if they are improvements prioritized in the Rincon Hill Plan, meet identified community needs, and serve as a substitute for improvements funded by impact fee revenue such as street improvements, transit improvements, and community facilities. Open space or streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible as in-kind improvements. No proposal for in-kind community improvements shall be accepted that does not conform to the criteria above. Project sponsors that pursue In-Kind Community Agreements with the City will be charged time and materials for any additional administrative costs that the Department or any other City agency incurs in processing the request to provide in-kind improvements in the form of streetscaping, sidewalk widening, neighborhood open space, community center, and other improvements that result in new public infrastructure and facilities described in Section 318.6 below.~~

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(1) The Rincon Hill Community Improvements Infrastructure Impact Fee and SOMA Stabilization Fee may be reduced by the total dollar value of the community improvements provided through an In-Kind Improvements Agreement recommended by the Director and approved by the Commission. For the purposes of calculating the total dollar value of in-kind community improvements, the project sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind community improvement(s) from two independent contractors sources or, if relevant, real estate appraisers. If the City has completed a detailed site-specific cost estimate for a planned improvement, this may serve as one of the cost estimates provided it is indexed to current cost of construction. Based on these estimates, the Director of Planning shall determine their the appropriate value of the in-kind improvements and the Planning Commission shall reduce the Rincon Hill Community Improvements Impact Fee or SOMA Stabilization Fee otherwise due by an equal amount assessed to that project proportionately. No credit shall be made for land value unless ownership of the land is transferred to the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of the City.

(2) All In-Kind Improvement Agreements shall require the project sponsor to reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with the In-Kind Improvements Agreement. The City shall also require the project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to the Department and the City Attorney, to secure the City's right to receive improvements as described above.

(d) (f) Option for Provision of Community Improvements via a Community Facilities (Mello-Roos) District. The Planning Commission shall waive the Community Improvements Impact Fee described in (b) above, either in whole or in part, for specific residential development proposals in cases where one or more project sponsors have entered into a Waiver Agreement with the City. Such waiver shall not exceed the value of the improvements to be provided under the Waiver Agreement. For purposes of calculating the total value of such improvements, the project sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind community improvements from two independent contractors. Based on these estimates, the Director of Planning shall determine their appropriate value.

(e) Timing of Fee Payments. The Rincon Hill Community Improvement Impact Fee and SOMA Stabilization Fee is due and payable to the Development Fee Collection Unit at DBI prior to issuance of the first construction document, with an option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge that would be paid into the appropriate fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

The sponsor shall pay to the Treasurer a Community Improvements Impact Fees of the following amounts for each net addition of occupiable square feet of residential use:

(i) Prior to the issuance by DBI of the first site or building permit for a residential development project within the Program Area, an \$11.00 Community Improvement Impact Fee in the Rincon Hill downtown residential area, as described in (a)(i) above, for the Rincon Hill Community Improvements Fund.

(ii) Prior to the issuance by DBI of a final certificate of occupancy for a residential development project within the Program Area, a \$13.75 SOMA Community Stabilization Fee in the Rincon Hill downtown residential area, as described in (a)(1) above for the SOMA Community Stabilization Fund or provide to the City an irrevocable letter of credit in a form approved in advance by the City Attorney to secure the payment of the \$13.75 Community Stabilization Fee within six months from the date of issuance by the Director of DBI of a final certificate of occupancy for the Rincon Hill Mitigation Fund, and prior to the issuance by DBI of the first site or building permit for a residential development project within the Program Area, a \$.25 SOMA Community Stabilization Fee in the Rincon Hill downtown residential area, as described in (a)(1) above for the SOMA Community Stabilization Fund.

(e) Upon payment of the Community Improvements Impact Fees in full to the Treasurer or upon the execution of a Waiver Agreement and upon request of the sponsor, the Treasurer shall issue a certification that the fee has been paid or a Waiver Agreement executed. The sponsor shall present such certification to the Planning Department, and MOH prior to the issuance by DBI of the first site or building permit for the residential development project. DBI shall not issue the site or building permit without the Treasurer's certification. An failure of the Treasurer, DBI, or the Planning Department to give any notice under this Section shall not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues a site or building permit without payment of the fee, DBI shall not issue any certificate of occupancy for the project without notification from the Treasurer that the fees required by this Section have been paid. The procedure set forth in this Subsection is not intended to preclude enforcement of the provisions of this Section under any other section of this Code, or other authority under the laws of the State of California.

(f) (g) Waiver or Reduction:

(1) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged.

(2) A project applicant subject to the requirements of this Section who has received an approved building permit, conditional use permit or similar discretionary approval and who submits a new or revised building permit, conditional use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the square footage of construction previously approved.

(3) Any such appeal shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay to the Treasurer the fee as required in Section 318.3(b). The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical information to support appellant's position. The decision of the Board shall be by a simple majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer.

(4) In the event that the Board of Supervisors grants a waiver or reduction under Section 408 of this Article Section, it shall be the policy of the Board of Supervisors that it shall adjust the percentage of inclusionary housing in lieu fees in Planning Code Section 827(b)(5)(C) of this Code such that a



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greater percentage of the in lieu fees will be spent in SOMA with the result that the waiver or reduction under this Section shall not reduce the overall funding to the SOMA community.

SEC. ~~420.2~~ ~~318-12~~. DEFINITIONS. ~~(a) In addition to the definitions set forth in Section 401 of this Article, the~~ following definitions shall govern ~~interpretation of this Section 420.1 et seq. this ordinance:~~

~~(1) (a) "Community facilities" shall mean all uses as defined under Section 209.4(a) of this Code.~~  
~~(2) (b) "Net addition of occupiable square feet of residential use" shall mean occupied floor area, as defined in Section 102.10 of this Code, including bathrooms provided as part of dwelling units, to be occupied by or primarily serving residential use excluding common areas such as hallways, fitness centers and lobbies, less the occupied floor area in any structure demolished or rehabilitated as part of the proposed residential development project which occupied floor area was used primarily and continuously for residential use and was not accessory to any use other than residential use for at least five years prior to Planning Department approval of the residential development project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

~~(c) "Residential development project" shall mean any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any occupied floor area of residential use and which has twenty (20) residential units or more; provided, however, that for projects that solely comprise an addition to an existing structure which would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Section shall only apply to the new occupied square footage.~~

~~(d) "Residential use" shall mean any structure or portion thereof intended for occupancy by uses as defined in Section 890.88 of this Code and shall not include any use which qualifies as an accessory use, as defined and regulated in Sections 204 through 204.5.~~

~~(e) "Sponsor" shall mean an applicant seeking approval for construction of a residential development project subject to this Section and such applicant's successors and assigns.~~

~~(f) "Townhome" shall mean a dwelling unit that: (i) either is a freestanding building, or shares only walls with other dwelling units; and (ii) has an entrance directly on a sidewalk used by members of the public or residents of the residential development project. "Townhome" shall not mean a dwelling unit of any type located on a podium over garage, community facility, commercial or other space.~~

~~(3) (c) "Visitation Valley" shall mean the area bounded by Carter Street and McLaren Park to the west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore Boulevard to the northeast, Bayview Park to the north, Candlestick Park and Candlestick Point Recreation Area to the east, the San Francisco Bay to the southeast, and the San Francisco County line to the south.~~

SEC. ~~421.1~~ ~~326-1~~. FINDINGS.

A. Market and Octavia Plan Objectives. The Market and Octavia Area Plan embodies the community's vision of a better neighborhood, which achieves multiple objectives including creating a healthy, vibrant transit-oriented neighborhood. The Planning Department coordinated development of the Area Plan objectives around the tenants of the Better Neighborhood Planning process and within the larger framework of the General Plan.

The Market and Octavia Plan Area encompasses a variety of districts, most of which are primarily residential or neighborhood commercial. The Area Plan calls for a maintenance of the well-established neighborhood character in these districts with a shift to a more transit-oriented type of districts. A transit-oriented district, be it neighborhood commercial or residential in character, generates a unique type of infrastructure needs.

The overall objective of the Market and Octavia planning effort is to encourage balanced growth in a centrally located section of the City that is ideal for transit oriented development. The Area Plan calls for an increase in housing and retail capacity simultaneous to infrastructure improvements in an effort to maintain and strengthen neighborhood character.

B. Need for New Housing and Retail. New residential construction in San Francisco is necessary to accommodate a growing population. The population of California has grown by more than 11 percent since 1990 and is expected to continue increasing. The San Francisco Bay Area is growing at a rate similar to the rest of the state.

The City should encourage new housing production in a manner that enhances existing neighborhoods and creates new high-density residential and mixed-use neighborhoods. One solution to the housing crisis is to encourage the construction of higher density housing in areas of the City best able to accommodate such housing. Areas like the Plan Area can better accommodate growth because of easy access to public transit, proximity to downtown, convenience of neighborhood shops to meet daily needs, and the availability of development opportunity sites. San Francisco's land constraints, as described in Section ~~418.1(A)~~ ~~318-1-4~~, limit new housing construction to areas of the City not previously designated as residential areas, infill sites, or areas that can absorb increased density.

The Market and Octavia Plan Area presents opportunity for infill development on various sites, including parcels along Octavia Boulevard known as "the Central Freeway parcels," some parcels along Market Street, and the SoMa West portions of the Plan Area. These sites are compelling opportunities because new housing can be built within easy walking distance of the downtown and Civic Center employment centers and City and regional transit centers, while maintaining the comfortable residential character and reinforcing the unique and exciting neighborhood qualities.

To respond to the identified need for housing, repair the fabric of the neighborhood, and support transit-oriented development, the Market and Octavia Plan Area is zoned for the appropriate residential and commercial uses. The Planning Department is adding a Van Ness Market Downtown Residential Special Use District (VNMDR-SUD) in the Plan Area and establishing a Residential Transit-oriented (RTO) district and several Neighborhood Commercial Transit (NCT) districts. New zoning controls encourage housing and commercial development appropriate to each district.

The plan builds on existing neighborhood character and establishes new standards for amenities necessary for a transit-oriented neighborhood. A transit-oriented neighborhood requires a full range of neighborhood serving businesses. New retail and office space will provide both neighborhood- and City-serving businesses.

San Francisco is experiencing a severe shortage of housing available to people at all income levels, especially to those with the lowest incomes while seeing a sharp increase in housing prices. The Association of Bay Area Governments' (ABAG) Regional Housing Needs Determination (RHND) forecasts that San Francisco must produce 2,716 new units of housing annually to meet projected needs. At least 5,639 of these new units should be available to moderate income households. New affordable units are funded through a variety of sources, including inclusionary housing and in lieu fees

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leveraged by new market rate residential development pursuant to Sections ~~413 313~~ and ~~415 315~~. The Planning Department projects that approximately 1,400 new units of affordable housing will be developed as a result of the plan. New Development Requires new Community Infrastructure.

The purpose for new development in the Plan Area is established above (Section ~~421.1(A) 326.1(a)~~). New construction should not diminish the City's open space, jeopardize the City's Transit First Policy, or place undue burden on the City's service systems. The new residential and ~~commercial~~ nonresidential construction should preserve the existing neighborhood services and character, as well as increase the level of service for all modes necessary to support transit-oriented development. New development in the area will create additional impact on the local infrastructure, thus generating a substantial need for community improvements as the district's population and workforce grows.

The amendments to the General Plan, Planning Code, and Zoning Maps that correspond to ~~Section 421.1 et seq. this ordinance~~ will permit an increased amount of new residential and commercial development. The Planning Department anticipates an increase of 5,960 units within the next 20 years, and an increase of 9,875 residents, as published in the environmental impact report. This new development will have an extraordinary impact on the Plan Area's infrastructure. As described more fully in the Market and Octavia Plan Final Environmental Impact Report, ~~San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. 071157, and the Market and Octavia Community Improvements Program Document, San Francisco Planning Department, Case No. \_\_\_\_\_ on file with the Clerk of the Board in File No. 071157,~~ new development will generate substantial new pedestrian, vehicle, bicycle, and transit trips which will impact the area. The transition to a new type of district is tantamount to the development of new subdivisions, or the transition of a district type, in terms of the need for new infrastructure.

The Market and Octavia Area Plan proposes to mitigate these impacts by providing extensive pedestrian, transit, traffic-calming and other streetscape improvements that will encourage residents to make as many daily trips as possible on foot, by bicycle or on transit; by creating new open space, greening, and recreational facilities that will provide necessary public spaces; and by establishing a range of other services and programming that will meet the needs of community members. A comprehensive program of new public infrastructure is necessary to lessen the impacts of the proposed new development and to provide the basic community improvements to the area's new community members. The Market and Octavia Community Improvements Program Document provides a more detailed description of proposed Community Improvements.

In order to enable ~~the City and County of~~ San Francisco to provide necessary public services to new residents; to maintain and improve the Market and Octavia Plan Area character; and to increase neighborhood livability and investment in the district, it is necessary to upgrade existing streets and streetscaping; acquire and develop neighborhood parks, recreation facilities and other community facilities to serve the new residents and workers.

While the open space requirements imposed on individual developments address minimum needs for private open space and access to light and air, such open space does not provide the necessary public social and recreational opportunities as attractive public facilities such as sidewalks, parks and other community facilities that are essential urban infrastructure, nor does it contribute to the overall transformation of the district into a safe and enjoyable transit-oriented neighborhood.

C. Program Scope. The purpose of the proposed Market and Octavia Community Improvements Infrastructure Impact Fees is to provide specific public improvements, including community open spaces, pedestrian and streetscape improvements and other facilities and services. These improvements are described in the Market and Octavia Area Plan and Neighborhood Plan and the accompanying ordinances, and are necessary to meet established City standards for the provision of such facilities. The Market and Octavia Community Improvements Infrastructure Fund and Community Improvements Infrastructure Impact Fee will create the necessary financial mechanism to fund these improvements in proportion to the need generated by new development.

National and international transportation studies (such as the Dutch Pedestrian Safety Research Review. T. Hummel, SWOV Institute for Road Safety Research (Holland), and University of North Carolina Highway Safety Research Center for the U.S. Department of Transportation, 1999 on file with the Clerk of the Board ~~in File No. \_\_\_\_\_~~) have demonstrated that pedestrian, traffic-calming and streetscape improvements of the type proposed for the Market and Octavia Plan Area result in safer, more attractive pedestrian conditions. These types of improvements are essential to making pedestrian activity a viable choice, thereby helping to mitigate traffic impacts associated with excess automobile trips that could otherwise be generated by new development.

The proposed Market and Octavia Community Infrastructure Impact Fee is necessary to maintain progress towards relevant state and national service standards, as well as local standards in the Goals and Objectives of the General Plan for open space and streetscape improvements as discussed in ~~Planning Code Section 418.1(F) 318.1(F)~~. Additionally the fee contributes to library resources and childcare facilities standards discussed below:

Library Resources: New residents in Plan Area will generate a substantial new need for library services. The San Francisco Public Library does not anticipate adequate demand for a new branch library in the Market and Octavia Plan Area at this time. However, the increase in population in Plan Area will create additional demand at other libraries, primarily the Main Library and the Eureka Valley Branch Library. The Market and Octavia Community Infrastructure Impact Fee includes funding for library services equal to \$69.00 per new resident, which is consistent with the service standards used by the San Francisco Public Library for allocating resources to neighborhood branch libraries. Child Care Facilities: New households in the Plan Area will generate a need for additional childcare facilities. Childcare services are integral to the financial and social success of families. Nationwide, research and policies are strengthening the link between childcare and residential growth, many Bay Area counties are leading in efforts to finance new childcare through new development. San Mateo has conducted detailed research linking housing to childcare needs. Santa Clara County has developed exemplary projects that provide childcare facilities in proximity to transit stations, and Santa Cruz has levied a fee on residential development to fund childcare. Similarly many research efforts have illustrated that adequate childcare services are crucial in supporting a healthy local economy, see research conducted by Louise Stoney, Mildred Warner, PPIC, County of San Mateo, CA on file with the Clerk of the Board ~~in File No. \_\_\_\_\_~~. MOCD's Project Connect Report identified childcare as an important community service in neighboring communities. Project connect did not survey the entire Market and Octavia Plan Area, it focused on low income communities, including Market and Octavia's neighbors in the Mission, Western Addition, and the Tenderloin. The Department of Children Youth and Their Families projects new residents of Market and Octavia will generate demand for an additional 435 childcare spaces, of those 287 will be serviced through new child care development centers.

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D. Programmed Improvements and Costs. Community improvements to mitigate the impact of new development in the Market and Octavia Plan Area were identified through a community planning process, based on proposals in the Market and Octavia Area Plan on file with the Clerk of the Board *in-File No.* \_\_\_\_\_, and on a standards based analysis, and on community input during the Plan adoption process. The Planning Department developed cost estimates to the extent possible for all proposed improvements. These are summarized by use type in Table 1. Cost projections in Table 1 are realistic estimates made by the Planning Department of the actual costs for improvements needed to support new development. More information on these cost estimates is located in the Market and Octavia Community Improvements Program Document. Cost estimates for some items on Table 1 are to be determined through ongoing analyses conducted in coordination with implementation of the Market and Octavia Plan Community Improvements Program. In many cases these projects require further design work, engineering, and environmental review, which may alter the nature of the improvements; the cost estimates are still reasonable approximates for the eventual cost of providing necessary community improvements to respond to identified community needs. The Board of Supervisors is not committing to the implementation of any particular project at this time. Projects may be substituted for like projects should new information from the Citizens Advisory Committee, the Interagency Plan Implementation Committee, other stakeholders, or the environmental review process illustrate that substitute projects should be prioritized. Cost projections will be updated at a minimum approximately every five years after adoption.

Table 1.  
Cost of proposed community improvements in the Market and Octavia Plan Area.

Market and Octavia Community Improvements	
Greening	\$58,310,000
Parks	\$6,850,000
Park Improvements	\$ TBD
Vehicle	\$49,260,000
Pedestrian	\$23,760,000
Transportation	\$81,180,000
Transit User Infrastructure	\$ TBD
Bicycle	\$1,580,000
Childcare	\$17,170,000
Library Materials	\$690,000
Recreational Facilities	\$15,060,000
Future Studies	\$460,000
Program Administration	\$4,730,000
<b>Total</b>	<b>\$258,900,000</b>

Provision of affordable housing needs are addressed in Sections ~~413 313~~ and ~~415 315~~ of the *Planning this* Code. Additionally subsidized affordable housing may be granted a waiver from the Market and Octavia Community Improvement Fee as provided for in ~~Section 406 of this Article 326.3 (4)(3)~~. This waiver may be leveraged as a local funding 'match' to Federal and State affordable housing subsidies enabling affordable housing developers to capture greater subsidies for projects in the Plan Area.

E. Sharing the Burden. As detailed above, new development in the Plan Area will clearly generate new infrastructure demands.

To fund such community infrastructure and amenities, new development in the district shall be assessed development impact fees proportionate to the increased demand for such infrastructure and amenities. The City will use the proceeds of the fee to build new infrastructure and enhance existing infrastructure, as described in preceding sections. A Community Improvements Impact Fee shall be established for the Van Ness and Market Downtown Residential Special Use District (VNMDR-SUD), and the Neighborhood Commercial Transit (NCT) and Residential Transit Oriented (RTO) Districts as set forth herein.

Many counties, cities and towns have one standardized impact fee schedule that covers the entire municipality. Although this type of impact fee structure works well for some types of infrastructure, such as affordable housing and basic transportation needs, it cannot account for the specific improvements needed in a neighborhood to accommodate specific growth. A localized impact fee gives currency to the community planning process and encourages a strong nexus between development and infrastructure improvements.

Development impact fees are an effective approach to achieve neighborhood mitigations and associate the costs with new residents, workers, and a new kind of development. The proposed Market and Octavia Community Improvements Impact Fee would be dedicated to infrastructure improvements in the Plan Area, directing benefits of the fund clearly to those who pay into the fund, by providing necessary infrastructure improvements, needed to serve new development. The net increases in individual property values in these areas due to the enhanced neighborhood amenities financed with the proceeds of the fee are expected to exceed the payments of fees by project sponsors.

The fee rate has been calculated by the Planning Department based on accepted professional methods for the calculation of such fees. The Market and Octavia Community Improvements Program Document contains a full discussion of impact fee calculation. Cost estimates are based on an assessment of the potential cost to the City of providing the specific improvements described in the Market and Octavia Plan Area. The *Planning* Department assigned a weighted value to new construction based on projected population increases in relation to the total population.

Proposed Additions highlighted and double underlined  
~~Proposed Deletions highlighted and double cross through~~

The proposed fee would cover less than 80% of the estimated costs of the community improvements calculated as necessary to mitigate the impacts of new development. By charging developers less than the maximum amount of the justified impact fee, the City avoids any need to refund money to developers if the fees collected exceed costs. The proposed fees only cover impacts caused by new development and are not intended to remedy existing deficiencies; those costs will be paid for by public, community, and other private sources.

The Market and Octavia community improvements program relies on public, private, and community capital. Since 2000, when the Market and Octavia planning process was initiated, the area has seen upwards of \$100 million in public investment, including the development of Octavia Boulevard, the new Central freeway ramp, Patricia's Green in Hayes Valley and related projects. Additionally private entities have invested in the area by improving private property and creating new commercial establishments. Community members have invested by creating a Community Benefits District in the adjacent Castro neighborhood, organizing design competitions, and lobbying for community programming such as a rotating arts program on Patricia's Green in Hayes Valley. Project sponsor contributions to the Market and Octavia Community Improvements Fund will help leverage additional public and community investment.

As a result of this new development, projected to occur over a 20-year period, property tax revenue is projected to increase by as much as \$28 million annually when projected housing production is complete. Sixteen million dollars of this new revenue will be diverted directly to San Francisco (see the Market and Octavia Community Improvements Program Document for a complete discussion of increased property tax revenue). These revenues will fund improvements and expansions to general City services, including police, fire, emergency, and other services needed to partially meet increased demand associated with new development. New development's local impact on community infrastructure will be greater in the Market and Octavia Plan Area, relative to those typically funded by City government through property tax revenues. Increased property taxes will contribute to continued maintenance and service delivery of new infrastructure and amenities. The City should pursue state enabling legislation that directs growth related increases in property tax directly to the neighborhood where growth is happening, similar to the redevelopment agencies' Tax Increment Financing tool. If such a revenue dedication tool does become available, the Planning Department should pursue an ordinance to adopt and apply a tax increment district to the Market and Octavia Plan Area even if the Plan is already adopted by the Board of Supervisors and in effect. The relative cost of capital improvements, along with the reduced role of State and Federal funding sources, increases the necessity for development impact fees to cover these costs. Residential and commercial impact fees are one of the many revenue sources necessary to mitigate the impacts of new development in the Market and Octavia Plan Area.

SEC. 421.2 326-2. DEFINITIONS.

~~In addition to See the definitions set forth in Section 401 of this Article. The~~ The following definitions shall govern interpretation of Section 421.1 et seq. this ordinance:

~~(a) Definitions from Section 418.2 318.2 shall apply unless otherwise noted in this Section.~~

~~(b) "Community facilities" shall mean all uses as defined under Section 209.4(a) and 209.3(d) of this Code.~~

~~(c) "Commercial use" shall mean any structure or portion thereof intended for occupancy by retail or office uses that qualify as an accessory use, as defined and regulated in Sections 204 through 204.5.~~

~~(d) "Commercial development project" shall mean any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any occupied floor area of commercial use, provided, however, that for projects that solely comprise an addition to an existing structure which would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Section shall only apply to the new occupied square footage.~~

~~(e) (e) "In Kind Agreement" shall mean aAn agreement acceptable in form and substance to the City Attorney and the Director of Planning between a project sponsor and the Planning Commission subject to the approval of the Planning Commission in its sole discretion to provide a specific set of community improvements, at a specific phase of construction, in lieu of contribution to the Market and Octavia Community Improvement Fund. The In Kind Agreement shall also mandate a covenant of the project sponsor to reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with the In Kind Agreement. The City also shall require the project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to the Planning Department and the City Attorney, to secure the City's right to receive payment as described in the preceding sentence.~~

~~(d) (f) "Net addition of occupiable square feet of commercial use" shall mean oOccupied floor area, as defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-residential use excluding common areas such as hallways, maintenance facilities and lobbies, less the occupied floor area in any structure demolished or rehabilitated as part of the proposed commercial development project which occupied floor area was used primarily and continuously for commercial use and was not accessory to any use other than residential use for at least five years prior to Planning Department approval of the residential development project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

~~(e) (g) "Program" shall mean tThe Market and Octavia Community Improvements as described in the Market and Octavia Community Improvements Program Document.~~

~~(f) (h) "Program Area" shall mean tThe Market and Octavia Plan Area in Map I (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan, which includes those districts zoned RTO, NCT, or any~~

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~~neighborhood specific NCT, a few parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown Residential Special Use District (VMDRSUD).~~

~~(g) (i) "Waiver Agreement" means a(n) agreement acceptable in form and substance to the Planning Department and the City Attorney, under which the City agrees to waive all or a portion of the Community Improvements Impact Fee, conditioned upon the project sponsor's covenant to make a good faith effort to secure the formation of a Community Facilities (Mello-Roos) District, if such a district has not already been successfully formed, and in any event to take all steps necessary to support the construction of a portion of the improvements described in Sections ~~421.5-326.6~~ (the "CFD Improvements") using the proceeds of one or more series of special tax bonds or moneys otherwise made available by such a district ("CFD Funds"). Such agreement shall include a specific description of the CFD Improvements and a specific date for the commencement of such improvements. Such agreement shall also provide that the project sponsor shall pay the full amount of the waived Community Improvements Impact Fee plus interest in the event that CFD Funds are not received in amounts necessary to commence construction of the CFD Improvements on the stated commencement date listed in the Waiver Agreement. The City also shall require the project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to the Planning Department and the City Attorney, to secure the City's right to receive payment as described in the preceding sentence.~~

~~(h) (j) "Residential Space Subject to the Community Improvement Impact Fee." means ~~Each~~ net addition of occupiable square feet within the Program Area which results in an additional residential unit or contributes to a 20 percent increase of residential space from the time that this ordinance is adopted within the Market and Octavia Community Improvements Fund.~~

~~(i) (k) "Commercial Space Subject to the Community Improvement Impact Fee." means ~~f~~For each net addition of occupiable square feet within the Program Area which results in an additional commercial unit or any increased commercial capacity that is beyond 20 percent of the non-residential capacity at the time that Section 421.1 et seq. this ordinance is adopted.~~

SEC. 421.3 326.3. APPLICATION OF COMMUNITY IMPROVEMENTS INFRASTRUCTURE IMPROVEMENT IMPACT FEE.

~~(a) Application. Section 421.1 et seq. shall apply to any development project located in the Program Area, which Program Area The Market and Octavia Community Improvements Neighborhood Program is hereby established and shall be implemented through district specific community improvements funds which apply to the following areas: The Program Area includes properties identified as part of the Market and Octavia Improvements Infrastructure Program Area Plan Area in Map 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan.~~

~~(b) Amount of Market and Octavia Community Improvements Impact Fees; Timing of Payment. The sponsor shall pay to the Treasurer Market and Octavia Community ~~Improvements Infrastructure~~ Impact Fees of the following amounts:~~

~~(1) Unless a Waiver Agreement has been executed, Prior to the issuance by DBI of the first construction document site or building permit for a residential development project, or residential component of a mixed use project within the Program Area, a \$10.00 Community Improvement Impact Fee in the Market and Octavia Plan Area, as described in (a) above, for the Market and Octavia Community Improvements Fund, for each net addition of occupiable square feet which results in an additional residential unit or contributes to a 20 percent increase of residential space from the time that Section 421.1 et seq. this ordinance is adopted.~~

~~(2) Unless a Waiver Agreement has been executed, Prior to the issuance by DBI of the first construction document site or building permit for a commercial development project, or ~~commercial non residential~~ component of a mixed use project within the Program Area, a \$4.00 Community Improvement Impact Fee in the Market and Octavia Plan Area, as described in (a) above, for the Market and Octavia Community Improvements Fund for each net addition of occupiable square feet which results in an additional ~~commercial nonresidential~~ capacity that is beyond 20 percent of the non-residential capacity at the time that Section 421.1 et seq. this ordinance is adopted.~~

~~(c) Upon request of the sponsor and upon payment of the Community Improvements Impact Fee in full to the Treasurer, the execution of a Waiver Agreement or In-Kind Agreement approved as described herein, the Treasurer shall issue a certification that the obligations of this section of the Planning Code have been met. The sponsor shall present such certification to the Planning Department and DBI prior to the issuance by DBI of the first site or building permit for the development project. DBI shall not issue the site or building permit without the Treasurer's certification. Any failure of the Treasurer, DBI, or the Planning Department to give any notice under this Section shall not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues a site or building permit without payment of the fee, Planning and DBI shall not issue any further permits or a certificate of occupancy for the project without notification from the Treasurer that the fees required by this Section have been paid or otherwise satisfied. The procedure set forth in this Subsection is not intended to preclude enforcement of the provisions of this Section under any other section of this Code, or other authority under the laws of the State of California.~~

~~(c) (d) Fee Adjustments.~~

**Exhibit B: Technical modifications/ Definition Consolidation**

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(1) Inflation Adjustments. *The Controller may make annual adjustments of the development fees for inflation in accordance with Section 409 of this Article. The Planning Commission may adjust the amount of the development impact fees set forth in the annual fee adjustments on an annual basis before the annual budget is approved.* The Market and Octavia Community ~~Improvements~~ Infrastructure Impact Fee adjustments should be based on the following factors: (a) the percentage increase or decrease in the cost to acquire real property for public park and open space use in the area and (b) the percentage increase or decrease in the construction cost of providing these and other improvements listed in Section ~~421.1(E) § 326.1(E)(a)~~. Fluctuations in the construction market can be gauged by indexes such as the Engineering News Record or a like index. Revision of the fee should be done in coordination with revision to other like fees, such as those detailed in Sections 247, ~~414 313, 414 314, 415 315, 418 318, and 419 319~~ of ~~this the~~ Planning Code. The Planning Department shall provide notice of any fee adjustment including the formula used to calculate the adjustment, on its website and to any interested party who has requested such notice at least 30 days prior to the adjustment taking effect.

(2) Program Adjustments. Upon Planning Commission and Board approval adjustments may be made to the fee to reflect changes to (a) the list of planned community improvements listed in ~~Section 421.1(D) § 326.1(D)~~; (b) re-evaluation of the nexus based on new conditions; or (c) further planning work which recommends a change in the scope of the community improvements program. Changes may not be made to mitigate temporary market conditions. Notwithstanding the foregoing, it is the intent of the Board of Supervisors that it is not committing to the implementation of any particular project at this time and changes to, additions, and substitutions of individual projects listed in the related program document can be made without adjustment to the fee rate or ~~Section 421.1 et seq. this ordinance~~ as those individual projects are placeholders that require further public deliberation and environmental review.

(3) Unless and until an adjustment has been made, the schedule set forth in this ~~Section 421.1 et seq. ordinance~~ shall be deemed to be the current and appropriate schedule of development impact fees.

~~(d) (e)~~ Option for In-Kind Provision of Community Improvements and Fee Credits. The Planning Commission may reduce the Market and Octavia Community Improvements Impact Fee described in (b) above owed for specific development projects proposals in cases where a project sponsor has entered into an In-Kind Agreement with the City to provide In-Kind improvements in the form of streetscaping, sidewalk widening, neighborhood open space, community center, and other improvements that result in new public infrastructure and facilities described in Section ~~421.1(E)(a) 326.1(E)(a)~~ or similar substitutes. For the purposes of calculating the total value of In-Kind community improvements, the project sponsor shall provide the Planning Department with a cost estimate for the proposed In-Kind community improvements from two independent contractors or, if relevant, real estate appraisers. If the City has completed a detailed site specific cost estimate for a planned community improvement this may serve as one of the cost estimates, required by this clause; if such an estimate is used it must be indexed to current cost of construction. Based on these estimates, the Director of Planning shall determine their appropriate value and the Planning Commission may reduce the Community Improvements Impact Fee assessed to that project proportionally. Approved In-Kind improvements should generally respond to priorities of the community, or fall within the guidelines of approved procedures for prioritizing projects in the Market and Octavia Community Improvements Program. Open space or streetscape improvements, including off-site improvements per the provisions of this Special Use District, proposed to satisfy the usable open space requirements of Section 135 and 138 ~~of this Code~~ are not eligible for credit toward the contribution as In-Kind improvements. No credit toward the contribution may be made for land value unless ownership of the land is transferred to the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of the City. A permanent easement shall be valued at no more than 50% of appraised fee simple land value, and may be valued at a lower percentage as determined by the Director of Planning in his or her sole discretion. Any proposal for contribution of property for public open space use shall follow the procedures of Subsection (6)(D) below. The Planning Commission may reject In-Kind improvements if they do not fit with the priorities identified in the plan, by the Interagency Plan Implementation Committee (see Section 36 of the Administrative Code), the Market and Octavia Citizens Advisory Committee (Section 341.5) or other prioritization processes related to Market and Octavia Community Improvements Programming.

~~(e) (f)~~ Option for Provision of Community Improvements via a Community Facilities (Mello-Roos) District. The Planning Commission may waive the Community Improvements Impact Fee described in ~~Section 421.3(b) 326.3(b)~~ above, either in whole or in part, for specific development proposals in cases where one or more project sponsors have entered into a Waiver Agreement with the City approved by the Board of Supervisors. Such waiver shall not exceed the value of the improvements to be provided through the Mello Roos district. In consideration of a Mello-Roos waiver agreement, the Board of Supervisors shall consider whether provision of Community Improvements through a Community Facilities (Mello-Roos) District will restrict funds in ways that will limit the City's ability to provide community amenities according to the established community priorities detailed in the Market and Octavia Area Plan, or to further amendments. The Board of Supervisors shall have the opportunity to comment on the structure of bonds issued for Mello Roos Districts. The Board of Supervisors may decline to enter into a Waiver Agreement if the establishment of a Mello Roos district does not serve the City or Area Plan's objectives related to Market and Octavia Community Improvements and general balance of revenue streams.

~~(f) (g)~~ Applicants who provide community improvements through a Community Facilities (Mello Roos) District or an In-Kind development will be responsible for all additional time and materials costs including, Planning Department staff, City Attorney time, and other costs necessary to administer the alternative to the direct payment of the fee. These costs shall be paid in addition to the community improvements obligation and billed no later than expenditure of bond funds on approved projects for Districts or promptly following satisfaction of the In-Kind Agreement. The Planning Department may designate a base fee for the establishment of a Mello Roos District, that project sponsors would be obliged to pay before the district is established. The base fee should cover basic costs associated with establishing a district but may not account for all expenses, a minimum estimate of the base fee will be published annually by the Planning Department.

~~(h) Waiver or Reduction:~~

~~(1) Waiver or Reduction Based on Absence of Reasonable Relationship.~~

~~(A) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged or for the reasons set forth in subsection (3) below, a project applicant may request a waiver from the Board of Supervisors.~~



**Exhibit B: Technical Modifications/ Definition Consolidation**

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~~(B) Any appeal of waiver requests under this clause shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay to the Treasurer the fee as required in Section 326.3(b). The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical information to support appellant's position. The decision of the Board shall be by a simple majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any change of use or scope of the project shall invalidate the waiver, adjustment, or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer and Planning Department.~~

~~(2) Waiver or Reduction, Based on Housing Affordability or Duplication of Fees. This section details waivers and reductions available by right for project sponsors that fulfill the requirements below. The Planning Department shall publish an annual schedule of specific values for waivers and reductions available under this clause. Planning Department staff shall apply these waivers based on the most recent schedule published at the time that fee payment is made.~~

~~(A) A project applicant subject to the requirements of this Section who has received an approved building permit, conditional use permit or similar discretionary approval and who submits a new or revised building permit, conditional use permit or similar discretionary approval for the same property shall be granted a reduction, adjustment or waiver of the requirements of Section of the Planning Code with respect to the square footage of construction previously approved.~~

~~(B) The Planning Commission shall give special consideration to offering reductions or waivers of the impact fee to housing projects on the grounds of affordability in cases in which the State of California, the Federal Government, the Mayor's Office of Housing, the San Francisco Redevelopment Agency, or other public subsidies target new housing for households at or below 50% of the Area Median Income as published by HUD. This waiver clause intends to provide a local "match" for these deeply subsidized units and should be considered as such by relevant agencies. Specifically these units may be rental or ownership opportunities but they must be subsidized in a manner which maintains their affordability for a term no less than 55 years. Project sponsors must demonstrate to the Planning Department staff that a governmental agency will be enforcing the term of affordability and reviewing performance and service plans as necessary, usually this takes the form of a deed restriction. Projects that meet the requirements of this clause are eligible for a 100 percent fee reduction until an alternative fee schedule is published by the Planning Department. Ideally some contribution will be made to the Market and Octavia Community Improvement Program, as these units will place an equal demand on community improvements infrastructure. This waiver clause shall not be applied to units built as part of a developer's efforts to meet the requirements of the Inclusionary Affordable Housing Program, and Section 315.~~

~~(C) The City shall make every effort not to assess duplicative fees on new development. This section discusses the method to determine the appropriate reduction amount for known possible conflicts. In general project sponsors are only eligible for fee waivers under this clause if a contribution to another fee program would result in a duplication of charges for a particular type of community infrastructure. Therefore applicants may only receive a waiver for the portion of the Market and Octavia Community Improvements Fund that addresses that infrastructure type. Refer to Table 2 for fee composition by infrastructure type. The Planning Department shall publish a schedule annually of all known opportunities for waivers and reductions under this clause, including the specific rate. Requirements under Section 135 and 138 do not qualify for waiver or reductions. Should future fees pose a duplicative charge, such as a Citywide open space or childcare fee, the same methodology shall apply and the Planning Department shall update the schedule of waivers or reductions accordingly. Additionally the City should work to ensure that fees levied on development in the Plan Area through other fee programs should be targeted towards improvements identified through the Market and Octavia Plan, especially fees that allow project sponsors to obtain a waiver from the Market and Octavia Community Improvement's Fund.~~

(i)  
 Table 2. Breakdown of Market and Octavia Community Improvements Fee by Infrastructure Type.  
 Components of Proposed Impact Fee

--	Residential	Commercial
Greening	34.1%	50.2%
Parks	8.2%	13.8%
Park Improvements	tbd	tbd
Vehicle	0.4%	0.4%
Pedestrian	6.9%	6.2%
Transportation	22.2%	20.1%
Transit User Infrastructure	tbd	tbd
Bicycle	0.5%	0.4%
Childcare	8.3%	0.0%
Library	0.9%	0.0%
Materials		
Recreational Facilities	13.1%	0.0%
Future Studies	0.2%	.4%

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Program Administration	5.1%	8.6%
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(ii) Applicants that are subject to the downtown parks fee, Section 139, can reduce their contribution to the Market and Octavia Community Improvements Fund by one dollar for every dollar that they contribute to the downtown parks fund, the total fee waiver or reduction granted through this clause shall not exceed 8.2 percent of calculated contribution for residential development or 13.8 percent for commercial development.

**SEC. 421.5 326-6. MARKET AND OCTAVIA COMMUNITY IMPROVEMENTS INFRASTRUCTURE FUND.**

(a) There is hereby established a separate fund set aside for a special purpose entitled the Market and Octavia Community Improvements Infrastructure Fund ("Fund"). All monies collected by ~~DBI~~ *the Treasurer* pursuant to Section ~~421.3(b) 326-3(b)~~ shall be deposited in a special fund maintained by the Controller. The receipts in the Fund to be used solely to fund community improvements subject to the conditions of this Section.

(b) The Fund shall be administered by the Board of Supervisors.

(1) All monies deposited in the Fund shall be used to design, engineer, acquire, and develop and improve neighborhood open spaces, pedestrian and streetscape improvements, community facilities, childcare facilities, and other improvements that result in new publicly-accessible facilities and related resources within the Market and Octavia Plan Area or within 250 feet of the Plan Area. Funds may be used for childcare facilities that are not publicly owned or "publicly-accessible". Funds generated for 'library resources' should be used for materials at the Main Library, the Eureka Valley Library, or other library facilities that directly service Market and Octavia Residents. Funds may be used for additional studies and fund administration as detailed in the Market and Octavia Community Improvements Infrastructure Program Document. These improvements shall be consistent with the Market and Octavia Civic Streets and Open Space System as described in Map 4 of the Market and Octavia Area Plan of the General Plan, and any Market and Octavia Improvements Plan. Monies from the Fund may be used by the Planning Commission to commission economic analyses for the purpose of revising the fee pursuant to Section ~~421.3(c) 326-3(d)~~ above, to complete an updated nexus study to demonstrate the relationship between development and the need for public facilities if this is deemed necessary.

(2) No portion of the Fund may be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar expense of any public entity, except for the purposes of administering this fund. Administration of this fund includes time and materials associated with reporting requirements, facilitating the Market and Octavia Citizens Advisory Committee meetings, and maintenance of the fund. Total expenses associated with administration of the fund shall not exceed the proportion calculated in Table 2 3 (above). All interest earned on this account shall be credited to the Market and Octavia Community Improvements Infrastructure Fund.

(c) With full participation by the Planning Department and related implementing agencies the Controller's Office shall file an annual report with the Board of Supervisors beginning 180 days after the last day of the fiscal year of the effective date of ~~Section 421.1 et seq. this ordinance~~, which shall include the following elements: (1) a description of the type of fee in each account or fund; (2) Amount of the fee; (3) Beginning and ending balance of the accounts or funds including any bond funds held by an outside trustee; (4) Amount of fees collected and interest earned; (5) Identification of each public improvement on which fees or bond funds were expended and amount of each expenditure; (6) An identification of the approximate date by which the construction of public improvements will commence; (7) A description of any inter-fund transfer or loan and the public improvement on which the transferred funds will be expended; and (8) Amount of refunds made and any allocations of unexpended fees that are not refunded.

~~Every fifth fiscal year following the first deposit into the account the following account reporting shall be made by the Controller's office in coordination with the Planning Department: (1) Purpose to which the fee is to be put; (2) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged; (3) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in this ordinance and subsequent reporting; and (4) Designate the approximate dates on which the funding referred to above (3) is expected to be deposited into the appropriate account or fund. The reporting requirements detailed in this section refer to the current requirements under AB1600; and are detailed here to insure that this fund fulfills all legal obligations as detailed by the State of California. Any amendments to AB1600 automatically apply to the reporting requirements of this ordinance and the ordinance should be amended accordingly.~~

(d) A public hearing shall be held by ~~both~~ the Recreation and Parks Commissions to elicit public comment on proposals for the acquisition of property using monies in the Fund in the Fund or through agreements for In-Kind or Community Facilities (Mello-Roos) District that will ultimately be maintained by the Department of Recreation and Parks. Notice of public hearings shall be published in an official newspaper at least 20 days prior to the date of the hearing, which notice shall set forth the time, place, and purpose of the hearing. The Parks Commissions may vote to recommend to the Board of Supervisors that it appropriate money from the Fund for acquisition of property for park use and for development of property acquired for park use.

(e) The Planning Commission shall work with other City agencies and commissions, specifically the Department of Recreation and Parks, ~~DPW~~ *Department of Public Works*, and the Metropolitan Transportation Agency, to develop agreements related to the administration of the improvements to existing and development of new public facilities within public rights-of-way or on any acquired property designed for park use, using such monies as have been allocated for that purpose at a hearing of the Board of Supervisors.

(f) The Director of Planning shall have the authority to prescribe rules and regulations governing the Fund, which are consistent with this ordinance. The Director of ~~Planning~~ shall make recommendations to the Board regarding allocation of funds.

**SEC. 422.2 331-2. DEFINITIONS.** ~~(a) In addition to See the definitions set forth in Section 401 of this Article. Definitions from Section 418.2 318.2 shall apply unless otherwise noted in this Section. The following definitions shall also govern interpretation of Section 422.1 et seq. this ordinance.~~



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~~(1) (d) "Balboa Park Impact Fee." shall refer to (The fee collected by the City to mitigate impacts of new development as described in findings, above.~~

~~(2) (e) "Balboa Park Community Improvements Fund." shall refer to (The fund that all fee revenue the City collects from the Balboa Park Impact Fee.~~

~~(3) (f) "In-kind Improvements Agreement." shall mean a (An agreement acceptable in form and substance to the City Attorney and the Planning Director between a project sponsor and the Planning Department, subject to the approval of the Planning Commission, in its sole discretion, to provide a specific set of public benefits, at a specific phase of construction, in lieu of monetary contribution to the Balboa Park Community Improvements Fund.~~

~~(4) (g) "Net addition of gross square feet of non-residential space." shall mean g (Gross floor area as defined in Planning Code Section 102.9 of this Code to be occupied by, or primarily serving, any non-residential use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed development project space used primarily and continuously for the same non-residential use within the same economic activity category. This space shall be accessory to any use other than that same non-residential use for five years prior to Planning Commission approval of the development project subject to this Section 422.1 et seq. or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

~~(5) (h) "Net addition of gross square feet of residential space." shall mean g (Gross floor area as defined in Planning Code Section 102.9 of this Code to be occupied by, or primarily serving, residential use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed residential development project space used primarily and continuously for residential use and not accessory to any use other than residential use for five years prior to Planning Commission approval of the development project subject to this Section 422.1 et seq. or for the life of the structure demolished or rehabilitated whichever is shorter.~~

~~(6) (e) "Non-Residential development project." shall mean a (Any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure that includes any occupied floor area of a non-residential use; provided, however, that for projects that solely comprise an addition to an existing structure that would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Section 422.1 et seq. shall only apply to the new occupied square footage.~~

~~(7) (f) "Non-Residential Space Subject to the Balboa Park Impact Fee." means e (Each net addition of gross square feet within the Project Area that contributes to a 20 percent increase in commercial capacity of an existing structure.~~

~~(8) (b) "Non-Residential Use." use shall i (includes everything not mentioned in the residential definition, including but not limited to any structure or portion thereof intended for occupancy by retail, office, commercial or other nonresidential uses defined in Section 217, 218, 219 and 221, and also in 209.3 and 209.8 of this the Planning Code. Publicly owned community facilities, including libraries and recreational facilities, and privately owned child care facilities are not defined as a "non-residential" use.~~

~~(9) (i) "Project Area." shall mean (The Balboa Park Plan Area in Figure 1 of the Balboa Park Station Area Plan of the San Francisco General Plan.~~

~~(10) (k) "Residential Space Subject to the Balboa Park Impact Fee." means e (Each net addition of gross square feet within the Project Area which results in a net new residential unit.~~

~~(a) "Residential Use" shall mean any type of use containing dwellings as defined in Section 209.1 of the Planning Code or containing group housing as defined in Section 209.2(a) (e) of the Planning Code, and 700.88, as relevant for the subject zoning district.~~

~~(11) (j) "Waiver Agreement." means a (An agreement acceptable in form and substance to the Planning Department and the City Attorney, under which the City agrees to waive all or a portion of the Balboa Park Impact Fee, provided the sponsor has demonstrated a hardship in achieving those objectives as well as all the requirements of the Plan.~~

SEC. 422.3 331-3. APPLICATION OF COMMUNITY IMPROVEMENT IMPACT FEE.

(a) Application. Project Area. The Balboa Park Community Improvements Fund is hereby established. It shall be implemented in part through the Balboa Park Impact Fee that applies to the Project Area and includes Section 422.1 et seq. shall apply to any development project located in the Balboa Park Community Improvements Program Area is herby established, which includes all properties identified as part of the Balboa Park Station Area Plan in Figure 1 of the San Francisco General Plan.

(b) Amount of Fee.

Exhibit B: Technical modifications/ Definition Consolidation

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Proposed Additions highlighted and double underlined  
~~Proposed Deletions highlighted and double cross through~~

~~(1) Residential Uses: \$8.00 per net addition of gross square feet which results in an additional residential unit or contributes to a 20 percent increase of residential floor area at the time that Section 422.1 et seq. was adopted in any development project with a residential use located within the Program Area; and~~

~~(2) Non-Residential Uses: \$1.50 per net addition of gross square feet which results in an additional non-residential floor area that is beyond 20 percent of the non-residential floor area at the time that Section 422.1 et seq. was adopted in any development project with a non-residential use located within the Program Area. Fees shall be charged on net additions of gross square feet which result in a net new residential unit or contribute to a 20 percent increase of gross square feet non-residential space in an existing structure. Fees shall be assessed on residential use and on non-residential use with no substitutions across uses. Fees shall be assessed on mixed-use projects according to the gross square feet of each use in the project.~~

~~(b) Prior to the issuance by the Department of Building Inspection of the first site or building permit for a residential development project or residential component of a mixed-use project within the Project Area, the sponsor of any project containing residential space subject to the Balboa Park Impact Fee shall pay to the Treasurer \$8.00 per gross square foot.~~

~~(c) Prior to the issuance by DBI of the first site or building permit for a non-residential development project or a non-residential component of a mixed-use project within the Project Area, the sponsor of any project containing non-residential space subject to the Balboa Park Impact Fee shall pay to the Treasurer \$1.50 per gross square foot.~~

~~(d) Upon request of the sponsor and upon payment of the Balboa Park Impact Fee in full to the Treasurer, the execution of a Waiver Agreement or In-Kind agreement approved as described herein, the Treasurer shall issue a certification that the obligations of this Section of the Planning Code have been met. The sponsor shall present such certification to the Planning Department and DBI prior to the issuance by DBI of the first site or building permit for the development project. DBI shall not issue the site or building permit without the Treasurer's certification that the fees required by this Section have been paid or otherwise satisfied. Any failure of the Treasurer, DBI, or the Planning Department to give notice of requirements under this Section shall not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues a site or building permit without payment of the fee, Planning and DBI shall not issue any further permits or a certificate of occupancy for the project without certification of fee payment from the Treasurer. The procedure set forth in this Subsection is not intended to preclude enforcement of the provisions of this Section under any other Section of this Code, or other authority under the laws of the City or State.~~

~~(e) Fee Adjustments. In conjunction with the five year Monitoring Program described in Administrative Code Chapter 10E, the City may review the amount of the Balboa Park Impact Fee, and consider whether an adjustment in fees is warranted according to a change in construction costs according to changes published in the Construction Cost Index published by the Engineering News-Record or according to another similar cost index. The City may adjust fees based on changes in estimated costs of the underlying improvements to be funded through the Balboa Park Impact Fee as listed in the Balboa Park Community Improvements Program. Revision of the fee should be done in coordination with revision to other like fees whenever possible. The Planning Department shall provide notice of any fee adjustment including the formula used to calculate the adjustment on its website and to any interested party who has requested such notice at least 30 days prior to the adjustment taking effect.~~

~~(c) (f) Option for In-Kind Provision of Community Improvements and Fee Credits Public Benefits. The Planning Commission may reduce the Balboa Park Community Improvements Impact Fee owed described above for specific development projects proposals in cases where the Planning Director has recommended approval recommends such an In-kind provision, and the project sponsor has entered into an In-Kind Improvements Agreement with the City. In-kind improvements may be accepted if they are recommended only where said improvements have been prioritized in the Plan, where they meet an identified community needs as analyzed in the Balboa Park Community Improvements Program, and serve as a where they substitute for improvements funded to be provided by impact fee revenue such as street improvements, transit improvements, and community facilities. Open space or streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible as in-kind improvements. No proposal for In-kind improvements shall be accepted that does not conform if it is not recommended by the Planning Director according to the criteria above. Project sponsors that pursue an In-kind Improvements Agreements with the City will be charged billed time and materials for any additional administrative costs that the Department or any other City agency incurs in processing the request.~~

~~(1) The Balboa Park Community Impact Fee may be reduced by the total dollar value of the community improvements provided through the an In-kind Improvements Agreement recommended by the Director and approved by the Commission shall be equivalent to the portion of the Balboa Park Impact Fee that is waived. For the purposes of calculating the total value, the project sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind improvement(s) from two independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it is indexed to current cost of construction. Based on these estimates, the Planning Director shall determine their the appropriate value of the in-kind improvements and the Planning Commission shall may reduce the Balboa Park Community Improvements Impact Fee otherwise due by an equal amount assessed to that project proportionally. Open space or streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible for credit toward the contribution as In-kind improvements. No credit toward the contribution may shall be made for land value unless ownership of the land is transferred to the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of the City.~~

~~(2) The All In-Kind Improvements Agreements shall require mandate a covenant of the project sponsor to reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with the In-Kind Improvements Agreement. The City also shall require the project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to the Planning Department and the City Attorney, to secure the City's right to receive improvements as described above.~~

~~(g) Waiver or Reduction.~~

~~(1) Waiver or Reduction Based on Hardship or Absence of Reasonable Relationship.~~

~~(A) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged or for the reasons set forth in subsection (3) below, a project applicant may request a waiver from the Board of Supervisors.~~

~~(B) Any appeal of waiver requests under this clause shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid to the Treasurer the fee as required in Section 331.3. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical~~

Exhibit B: Technical Modifications/ Definition Consolidation

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Proposed Deletions highlighted and double cross through

~~information to support appellant's position. If a reduction, adjustment, or waiver is granted, any change of use or scope of the project shall invalidate the waiver, adjustment or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer and Planning Department.~~

~~(2) Waiver or Reduction Based on Duplication of Fees. This Section details waivers and reductions available by right for project sponsors that fulfill the requirements below.~~

~~(A) A project applicant subject to the requirements of this Section, who has received an approved building permit, conditional use permit, or similar discretionary approval and who submits a new or revised building permit, conditional use permit, or similar discretionary approval for the same property shall be granted a reduction, adjustment, or waiver of the requirements of Section 331.3 of the Planning Code with respect to the square footage of construction previously approved.~~

~~(B) The City shall not assess duplicative fees on new development. In general project sponsors are only eligible for fee waivers under this clause if a contribution to another fee program would result in a duplication of charges for a particular type of community infrastructure. Therefore applicants may receive a waiver for only the portion of the Balboa Park Community Improvements Fund that addresses that infrastructure type. Requirements under Section 135 do not qualify for waiver or reductions. Should future fees pose a duplicative charge, the same methodology shall apply and the Planning Department shall update the schedule of waivers or reductions accordingly.~~

~~(b) The Department or Commission shall impose a condition on the approval of application for a development project subject to Section 422.1 et seq. The project sponsor shall supply all information to the Department or the Commission necessary to make a determination as to the applicability of Section 422.1 et seq. and imposition of the requirements.~~

~~(c) Timing and Payment of Fee. The fee required by this Section is due and payable to the Development Fee Collection Unit at DBI prior to issuance of the first construction document for the development project deferred to prior to issuance of the first certificate of occupancy pursuant to Section 107A.13.3.1 of the San Francisco Building Code.~~

SEC. 423. 327. EASTERN NEIGHBORHOODS INFRASTRUCTURE IMPACT FEES AND PUBLIC BENEFITS FUND.

Sections 423.1 327-1 through to 423.5 327-6 set forth the requirements and procedures for the Eastern Neighborhoods Infrastructure Impact Fee and Public Benefits Fund.

SEC. 423.2. 327.2. DEFINITIONS. (a) In addition to See the definitions set forth in Section 401 of this Article,  
~~The following definitions shall govern interpretation of Section 423.1 et seq. this ordinance:~~

~~(1) (a) Definitions from Section 418.2 318.2 shall apply unless otherwise noted in this Section.~~

~~(2) (c) "Community facilities." shall mean a all uses as defined under Section 209.4(a) and 209.3(d) of this Code.~~

~~(3) (b) "Designated affordable housing zones." for the purposes of this section, shall mean the Mission NCT defined in Section 736 and the Mixed Use Residential District defined in Section 841.~~

~~(4) (d) "Eastern Neighborhoods Impact Fee." shall refer to the fee collected by the City to mitigate impacts of new development as described in Findings, above.~~

~~(5) (e) "Eastern Neighborhoods Public Benefits Fund." shall refer to the fund into which all fee revenue collected by the City from the Eastern Neighborhoods Impact Fee.~~

~~(6) (f) "In-kind Improvements Agreement." shall mean a an agreement acceptable in form and substance to the City Attorney and the Planning Director between a project sponsor and the Planning Department subject to the approval of the Planning Commission in its sole discretion to provide a specific set of public benefits, at a specific phase of construction, in lieu of monetary contribution to the Eastern Neighborhoods Public Benefits Fund.~~

~~(7) (g) "Net addition of gross square feet of non-residential space." shall mean gGross floor area as defined in Planning Code Section 102.9 of this Code to be occupied by, or primarily serving, any non-residential use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed development project space used primarily and continuously for the same non-residential use within the same economic activity category, and not accessory to any use other than that same non-residential use for five years prior to Planning Commission approval of the development project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

~~(8) (h) "Net addition of gross square feet of residential space." shall mean gGross floor area as defined in Planning Code Section 102.9 of this Code to be occupied by, or primarily serving, residential use, less the gross floor area in any structure demolished or rehabilitated as part of the proposed residential development project space used primarily and continuously for residential use and not accessory to any use other than residential use for five years prior to Planning Commission approval of the development project subject to this Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

~~(9) (i) "Non-residential use." shall mean aAny structure or portion thereof intended for occupancy by retail, office, commercial or other nonresidential uses defined in Section 217, 218, 219 and 221, and also in 209.3 and 209.8 of the Planning this Code, including uses referenced in the Eastern Neighborhoods Nexus Study. For the purposes of this Section it shall not include industrial uses, including those contained in Sections 220, 222, 223, 224, 225, and 226 of the Planning this Code, or uses that qualify as an accessory use, as defined and regulated in Sections 204 through 204.5 of this Code.~~

**Exhibit B: Technical modifications/ Definition Consolidation**

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**Proposed Additions highlighted and double underlined**  
**Proposed Deletions highlighted and double cross through**

~~Non-residential uses shall include the economic activity categories of Cultural/Institution/Education; Management, Information & Professional Service; Medical & Health Service; Retail/Entertainment; and Visitor Services.~~

~~(10) (i) "Non-residential development project." shall mean a Any new construction, addition, extension, conversion or enlargement, or combination thereof, of an existing structure which includes any occupied floor area of non-residential use; provided, however, that for projects that solely comprise an addition to an existing structure which would add occupied floor area in an amount less than 20 percent of the occupied floor area of the existing structure, the provisions of this Section shall only apply to the new occupied square footage.~~

~~(11) (k) "Non-residential Space Subject to the Eastern Neighborhoods Impact Fee." means eEach net addition of net square feet within the Project Area which contributes to a 20 percent increase in non-residential capacity of an existing structure.~~

~~(12) (l) "Project Area." shall mean tThe Eastern Neighborhoods Plan Area in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco General Plan.~~

~~(m) "Residential" shall mean any type of use containing dwellings as defined in Section 209.1, 790.88, and 890.88 of the Planning Code as relevant for the subject zoning district or containing group housing as defined in Section 209.2(a)-(e) of the Planning Code.~~

~~(13) (n) "Residential Space Subject to the Eastern Neighborhoods Impact Fee." means eEach net addition of net square feet within the Project Area which results in a net new residential unit.~~

~~(14) "Tier 1." Sites which do not receive zoning changes that increase heights, as compared to allowable height prior to the rezoning (May 2008), all 100% affordable housing projects, and all housing projects within the Urban Mixed Use (UMU) district.~~

~~(15) "Tier 2." Sites which receive zoning changes that increase heights by one to two stories.~~

~~(16) "Tier 3." Sites which receive zoning changes that increase heights by three or more stories and in the Mixed~~

Use Residential District.

~~(17) (o) "Waiver Agreement." means a An agreement acceptable in form and substance to the Planning Department and the City Attorney, under which the City agrees to waive all or a portion of the Eastern Neighborhoods Impact Fee, provided the sponsor has demonstrated a hardship in achieving those objectives as well as all the requirements of the Plan. Such a waiver may also be granted as a part of a signed covenant to make a good faith effort to secure the formation of a Community Facilities (Mello-Roos) District.~~

**SEC. 423.3. 323.3. APPLICATION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE IMPACT FEE.**

~~(a) Application. Section 423.1 et seq. shall apply to any development project located in the Eastern Neighborhoods Public Benefits Program Area, which Project Area. The Eastern Neighborhoods Public Benefits Fund is hereby established. It shall be implemented in part through district-specific Eastern Neighborhoods Impact Fee which applies to the Project Area and includes properties identified as part of the Eastern Neighborhoods Plan Areas in Map 1 (Land Use Plan) of the San Francisco General Plan.~~

~~(b) Amount of Fee.~~

~~(1) Residential Uses. The Fees set forth in Table 423.3 below shall be charged on net additions of gross square feet which result in a net new residential unit, contribute to a 20 percent increase of non-residential space in an existing structure, or create non-residential space in a new structure. Fees shall be assessed on residential use, and~~

~~(2) Non-Residential Uses. The fees set forth in Table 423.3 below shall be charged on non-residential use within each use category of Cultural/Institution/Education; Management, Information & Professional Service; Medical & Health Service; Retail/Entertainment; and Visitor Services; with no substitutions across uses. Fees shall not be required for uses contained in Sections 220, 222, 223, 224, 225, and 226 of the Planning this Code.~~

~~(3) Mixed Use Projects. Fees shall be assessed on mixed use projects according to the gross square feet of each residential and non-residential use in the project.~~

~~(b) Prior to the issuance by the Department of Building Inspection (DBI) of the first site or building permit for a residential development project, or residential component of a mixed use project within the Project Area, the sponsor of any project containing residential space subject to the Eastern Neighborhoods Impact Fee shall pay to the Treasurer according to the schedule in Table 327.3.~~

~~(c) Prior to the issuance by DBI of the first site or building permit for a non-residential development project, or non-residential component of a mixed use project within the Project Area, the sponsor of any project containing non-residential space subject to the Eastern Neighborhoods Impact Fee shall pay to the Treasurer according to the schedule in Table 327.3.~~

TABLE 423.3 327.3

FEE SCHEDULE FOR EASTERN NEIGHBORHOODS PLAN AREAS

Tier	Residential	Non-residential*
1	\$8/gsf	\$6/gsf
2	\$12/gsf	\$10/gsf

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3	\$16/gsf	\$14/gsf
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~~(d) Upon request of the sponsor and upon payment of the Eastern Neighborhoods Impact Fee in full to the Treasurer, the execution of a Waiver Agreement or In-Kind agreement approved as described herein, the Treasurer shall issue a certification that the obligations of this section of the Planning Code have been met. The sponsor shall present such certification to the Planning Department and DBI prior to the issuance by DBI of the first site or building permit for the development project. DBI shall not issue the site or building permit without the Treasurer's certification that the fees required by this Section have been paid or otherwise satisfied. Any failure of the Treasurer, DBI, or the Planning Department to give notice of requirements under this Section shall not relieve a sponsor from compliance with this Section. Where DBI inadvertently issues a site or building permit without payment of the fee, Planning and DBI shall not issue any further permits or a certificate of occupancy for the project without certification from the Treasurer. The procedure set forth in this Subsection is not intended to preclude enforcement of the provisions of this Section under any other section of this Code, or other authority under the laws of the City or State of California.~~

~~(e) Fee Adjustments. In conjunction with the five-year Monitoring Program required by the Administrative Code Section (note: section number to be determined), the City may review the amount of the Eastern Neighborhoods Impact Fee, should such an increase in fees be warranted according to an increase in construction costs according to changes published in the Construction Cost Index published by the Engineering News-Record, or according to another similar cost index should there be one more appropriate. The City may also adjust fees based on changes in estimated costs of the underlying improvements to be funded through the Eastern Neighborhoods Impact Fee as listed in the Eastern Neighborhoods Program. Revision of the fee should be done in coordination with revision to other like fees whenever possible. The Planning Department shall provide notice of any fee adjustment including the formula used to calculate the adjustment on its website and to any interested party who has requested such notice at least 30 days prior to the adjustment taking effect.~~

~~(c) (f) Option for In-Kind Provision of Public Benefits and Fee Credits. The Planning Commission may reduce the Eastern Neighborhoods Impact Fee owed described in (b) above for specific development projects proposals in cases where the Planning Director has recommended approval such an in-kind provision, and the project sponsor has entered into an In-Kind Improvements Agreement with the City. In-kind improvements may be accepted if they are only be recommended where said improvements have been prioritized in the pPlan, where they meet an identified community need as analyzed in the Eastern Neighborhoods Needs Assessment, and serve as a where they substitute for improvements funded be provided by impact fee revenue such as public open spaces and recreational facilities, transportation and transit service, streetscapes or the public realm, and community facility space. Open space or streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible as in-kind improvements. No proposal for In-kind improvements shall be accepted that does not conform if it is not recommended by the Planning Director according to the criteria above. Project sponsors that pursue an in-kind Improvement Agreements with the City waiver will be charged are responsible time and materials for any additional administrative costs that the Department or any other City agency incurs in processing the request.~~

~~(1) The Eastern Neighborhoods Infrastructure Impact Fee may be reduced by the total dollar value of the community improvements provided through the an In-kind Improvements aAgreement recommended by the Director and approved by the Commission shall be equivalent to the portion of the Eastern Neighborhoods Impact Fee that is waived. For the purposes of calculating the total value, the project sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind Public Benefits from two independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it is indexed to current cost of construction. Based on these estimates, the Planning Director shall determine their the appropriate value of the in-kind improvements and the Planning Commission may reduce the Eastern Neighborhoods Impact Fee otherwise due by an equal amount assessed to that project proportionally. Open space or streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible for credit toward the contribution as In-Kind improvements. No credit toward the contribution may shall be made for land value unless ownership of the land is transferred to the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of the City.~~

~~(2) The All In-Kind Improvements aAgreements shall require also mandate a covenant of the project sponsor to reimburse all city agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with the In-Kind Improvements aAgreement. The City also shall require the project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to the Planning Department and the City Attorney, to secure the City's right to receive improvements as described above.~~

~~(d) (g) Waiver or Reduction of Fees. The provisions for (1) Waiver or Reduction Based on Hardship or Absence of Reasonable Relationship, waiver or reduction of fees are set forth in Section 406 of this Article. In addition to those provisions~~

~~(A) A project applicant of any project subject to the requirements in this Section may appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and the amount of the fee charged or for the reasons set forth in subsection (2) below, a project applicant may request a waiver from the Board of Supervisors.~~

~~(B) Any appeal of waiver requests under this clause shall be made in writing and filed with the Clerk of the Board no later than 15 days after the date the sponsor is required to pay and has paid to the Treasurer the fee as required in Section 327.3(b). The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the appeal at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden of presenting substantial evidence to support the appeal, including comparable technical information to support appellant's position. If a reduction, adjustment, or waiver is granted, any change of use or scope of the project shall invalidate the waiver, adjustment, or reduction of the fee. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the Treasurer and Planning Department.~~

~~(2) Waiver or Reduction Based on Duplication of Fees. This Section details waivers and reductions available by right for project sponsors that fulfill the requirements below.~~

Exhibit B: Technical Modifications/ Definition Consolidation

CASE NO. 2009.1065T, Development Stimulus and Fee Reform

**Proposed Additions highlighted and double underlined**

**~~Proposed Deletions highlighted and double cross through~~**

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~~(A) A project applicant subject to the requirements of this Section who has received an approved building permit, conditional use permit or similar discretionary approval and who submits a new or revised building permit, conditional use permit or similar discretionary approval for the same property shall be granted a reduction, adjustment or waiver of the requirements of Section 327 of the Planning Code with respect to the square footage of construction previously approved.~~

~~(B) The City shall not to assess duplicative fees on new development. In general project sponsors are only eligible for fee waivers under this clause if a contribution to another fee program would result in a duplication of charges for a particular type of community infrastructure. Therefore applicants may only receive a waiver for the portion of the Eastern Neighborhoods Public Benefits Fund that addresses that infrastructure type. Requirements under Section 135 do not qualify for waiver or reductions. Should future fees pose a duplicative charge, the same methodology shall apply and the Planning Department shall update the schedule of waivers or reductions accordingly.~~



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18017

HEARING DATE: JANUARY 21, 2010

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San Francisco,  
CA 94103-2479

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*Project Name:* Development Stimulus and Fee Reform

*Case Number:* 2009.1065T [Board File No. 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary & Jobs Housing Linkage Programs ]

*Initiated by:* Mayor Newsom / Introduced November 3, 2009

*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Reviewed By:* Lawrence Badiner, Assistant Director and  
Alicia John-Baptiste, Assistant Director

*90-day Deadline:* February 3, 2010

*Recommendation:* Approval with Modifications

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS THREE PROPOSED ORDINANCES INTRODUCED BY MAYOR NEWSOM THAT COMPRISE A LEGISLATIVE PACKAGE INTENDED TO STIMULATE DEVELOPMENT AND CONSTRUCTION IN SAN FRANCISCO. THE PROPOSED PACKAGE SEEKS TO CREATE OPPORTUNITIES TO LINK PAYMENT OF PERMITTING FEES TO FIRST CONSTRUCTION PERMIT, WHEN LOANS ARE MORE READILY AVAILABLE FOR CONTRACTORS, WHILE PROTECTING THE CITY'S REVENUE STREAM OF DEVELOPMENT IMPACT AND PROCESSING FEES.

### PREAMBLE

Whereas, on October 27, 2009 and November 3, 2009, Mayor Newsom introduced three proposed Ordinance under Board of Supervisors (hereinafter "Board") File Numbers 09-1275 Development Impact and In-Lieu Fees, 09-1251 Development Fee Collection Procedure; Administrative Fee, and 09-1252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs.

Whereas, on December 15, 2009 revised ordinances were introduced for the Development Fee Collection Procedure; Administrative Fee and the Development Impact and In-Lieu Fees Ordinances [Board File No.s 09-1251-2 and 09-1275-2].

Whereas, respectively, these proposed Ordinances would

1. **BF 091275-2 Development Impact and In-Lieu Fees** would create a new Article Four in the Planning Code to consolidate fee and in-lieu controls in one article; add Section 402 to provide that all impact fees and in-lieu fees will be collected by DBI prior to issuance of the first construction permit, with the option to defer payment to prior to issuance of the first certificate of occupancy in exchange for a deferral surcharge; provide that physical improvements would be confirmed by the regulating department prior to first certificate of occupancy; and where possible, create standard definitions, procedures, appeals, and reporting standards while deleting duplicative language.

The following fees would be placed in the new Article Four:

- a. Downtown Park Special Fund (Section 139);
  - b. Van Ness and Market Downtown Residential Special Use District (Section 249.33);
  - c. Housing Requirements for Large-Scale Development Projects, Jobs-Housing Linkage Program (Sections 313-313.15);
  - d. Child-Care Requirements for Office and Hotel Developments (Sections 314-314.8);
  - e. Inclusionary Affordable Housing Program (Sections 315-315.9);
  - f. Residential Community Improvements Fund and the SoMa Community Stabilization Fund (Section 318-318.9);
  - g. Housing Requirements for Residential Development Projects in the UMU Zoning Districts of the Eastern Neighborhoods and the Land Dedication Alternative in the Mission NCT District (Section 319-319.7);
  - h. Market and Octavia Community Improvements Fund (Sections 326-326.8);
  - i. Eastern Neighborhoods Public Benefit Fund (Section 327-327.6);
  - j. Balboa Park Community Improvement Fund (Sections 331-331.6);
  - k. Visitacion Valley Community Facilities and Infrastructure Fee (Sections 420 – 420.5.) and
  - l. Transit Impact Development Fee (Chapter 36 of the Administrative Code).
2. **BF 091251-2 Development Fee Collection Procedure; Administrative Fee** would amend the Building Code to establish a procedure for the Department of Building Inspection (DBI) to collect all development impact fees. The proposed Ordinance would ensure that fees are paid prior to the issuance of the first construction permit or allow the project sponsor to defer payment until issuance of first certificate of occupancy in exchange for paying a fee deferral surcharge. These fee procedures would be implemented by a new "Fee Collection Unit" within DBI that would ensure fee payment prior to issuance periods; would require a Project Development Fee Report prior to issuance of building or site permits; and would provide an appeal opportunity to the Board of Appeals.
  3. **BF 091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs** would amend Sections 313.4 and 315.5 and add 313.16 to add an alternative for both the Jobs Housing Linkage Program and the Residential Inclusionary Affordable Housing Program. The new option would allow a project sponsor to defer 33% of its obligation under either program in exchange for recording an Affordable Housing Transfer Fee



Restriction on the property. This fee restriction would require 1% of the value of the property at every future sale to be paid to the Citywide Affordable Housing Fund.

Whereas, In March, 2008, San Francisco published its Citywide Development Impact Fee Study Consolidated Report. The purpose of the Study was to evaluate the overall state, effectiveness, and consistency of the City's impact fee collection process and to identify improvements. Among other things, the Study cited the City's decentralized process as a problem. Centralizing the collection of development impact and in-lieu fees within the Department of Building Inspection and providing for an auditing and dispute-resolution function within DBI will further the City's goals of streamlining the process, ensuring that fees are accurately assessed and collected in a timely manner, informing the public of the fees assessed and collected, and implementing some suggestions in the Consolidated Report.

Whereas, the current economic climate has dramatically slowed the development of new commercial and residential projects in California, including in the City and County of San Francisco. In the construction sector, working hours among the trades have declined between 30% and 40% from a year ago.

Whereas, The Controller's Office has verified that the amount of the reduction in obligations under Jobs-Housing Linkage Program and the Residential Inclusionary Affordable Housing Program and the expected value of the Affordable Housing Transfer Fee are substantially equivalent. The Controller's Office derived the 33% reduction in obligations under the two ordinances by discounting a reasonably conservative estimate of average citywide sales prices, property turnover rates and appreciation rates for the three major types of land use subject to affordable housing fees and exactions in San Francisco: (1) for-sale residential; (2) rental residential; and (3) commercial office.

Whereas, on January 21, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, at that hearing the Commission requested to hear and vote on two of the Ordinances first [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee] and then consider and vote on the third Ordinance [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs].

Whereas, this resolution pertains solely to [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs] and Resolution Number 18015 pertains to [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee].

Whereas, the proposed Ordinances have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15273; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of City department, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinances; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors recommends *approval with modifications of the proposed Ordinances and* adopts the attached Draft Resolution to that effect.

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The proposal for fee deferrals has been reviewed by the MOH and the Controller. The proposal has been endorsed by MOH and the Controller's Office has provided data projecting that overall revenue for affordable housing will not be lost.
2. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### Commerce & Industry Element POLICY 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

### Commerce & Industry Element OBJECTIVE 2:

Maintain and enhance a sound and diverse economic base and fiscal structure for the city.

### Commerce & Industry Element POLICY 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

### Recreation and Open Space Element Introductory Text

Maintaining the City's existing open space system is a continuing challenge. Maintenance continues to be a problem due to rising costs and limitations on staffing and equipment. In addition, many of the parks are old and both park landscapes and recreation structures are in need of repair or renovation. Heavily used parks and recreation facilities require additional maintenance. However, the number of recreation facilities has increased and their use intensified, often without a corresponding increase in the budget necessary to maintain facilities and offer the desired recreation programs.

Recreation and Open Space Element POLICY 2.1

Provide an adequate total quantity and equitable distribution of public open spaces throughout the City.

Recreation and Open Space Element POLICY 2.7

Acquire additional open space for public use.

Recreation and Open Space Element POLICY 4.4

Acquire and develop new public open space in existing residential neighborhoods, giving priority to areas which are most deficient in open space.

Community Facilities Element Objective 3

ASSURE THAT NEIGHBORHOOD RESIDENTS HAVE ACCESS TO NEEDED SERVICES AND A FOCUS FOR NEIGHBORHOOD ACTIVITIES.

Community Facilities Element Policy 3.1

Provide neighborhood centers in areas lacking adequate community facilities.

Community Facilities Element Policy 3.4

Locate neighborhood centers so they are easily accessible and near the natural center of activity.

Community Facilities Element Policy 3.6

Base priority for the development of neighborhood centers on relative need.

Community Facilities Element Objective 8

ASSURE THAT PUBLIC SCHOOL FACILITIES ARE DISTRIBUTED AND LOCATED IN A MANNER THAT WILL ENHANCE THEIR EFFICIENT AND EFFECTIVE USE.

Transportation Element POLICY 1.1:

Involve citizens in planning and developing transportation facilities and services, and in further defining objectives and policies as they relate to district plans and specific projects.

Air Quality Element POLICY 3.1

Take advantage of the high density development in San Francisco to improve the transit infrastructure and also encourage high density and compact development where an extensive transportation infrastructure exists.

Air Quality Element POLICY 3.4

Continue past efforts and existing policies to promote new residential development in and close to the downtown area and other centers of employment, to reduce the number of auto commute trips to the city and to improve the housing/job balance within the city.

**Air Quality Element POLICY 3.6**

Link land use decision making policies to the availability of transit and consider the impacts of these policies on the local and regional transportation system.

**Urban Design Element POLICY 3.9**

Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

**3. The Commission is recommending the following modifications to the proposed Ordinances:**

1. Clarify that this new ability to defer fees is offered only to those projects that have not yet paid development impact fees. Since the adoption of the Area Plans, City agencies have been working to plan and build infrastructure for new development. Collected impact fees have been programmed and are needed to complete planned infrastructure. The administrative burden of providing *fee refunds* to then allow *fee deferrals* is disproportionate to the relative benefit to the projects that fall within in this category. Further, DBI has advised that offering refunds would be administratively infeasible.
2. Tighten the procedures around the "Affordable Housing Transfer Fee Restriction". The proposed Ordinance should be amended to require the Fee Unit in DBI to be presented with the required NSR at a specific points such as "First Construction Permit". In addition MOH and the Fee Collection Unit in DBI should be required to (instead of authorized to) record separate NSRs on subsequent subdivisions of the property.
3. Remove the option to pre-pay the "present value" of the restriction. The current draft of the proposed legislation allows property owners to pre-pay the "present value" of the restriction at any time to remove the NSR, although the "present value of the restriction" is not reduced through previous transfer payments. However, based on feedback received from a variety of stakeholders, the Mayor's Office, OEWD and MOH have all agreed that this provision will be eliminated in subsequent amendments.
4. Include a legislative end-date for fee deferrals. As this legislative package is intended to counter the difficult economic times, an end-date should be added where the City would no longer allow the deferral of fees. In lieu of pre-determining the date, the legislation should be amended to expire under one of the following markers 1) once a certain number of residential units and/or square foot of commercial development has been built; 2) the Controller has determined that a standard economic indicator has been reached; or alternatively, 3) the legislation could require review of the deferral programs at regular intervals before both the Planning Commission and the Land Use Committee of the Board of Supervisors.

4. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance would allow additional neighborhood serving retail and personal services.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance would not affect existing residential character or diversity of our neighborhoods.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*According to the Mayor's Office of Housing, "After numerous discussions with interested parties and analysis of applicable data, the Mayor's Office of Housing believes this proposal provides an excellent opportunity in the midst of the current economic climate; accelerating quality development and its associated revenues while creating a lasting impact on San Francisco's chronic affordable housing crisis."*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake would not be impeded by the proposed Ordinance.*

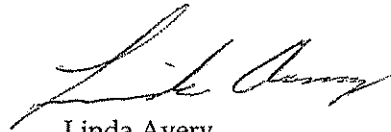
- G) That landmark and historic buildings will be preserved:

*Landmarks and historic buildings would be unaffected by the proposed amendments.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The City's existing parks and open space and their access to sunlight and vistas would not be affected by the proposed Ordinance.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on January 21, 2010.



Linda Avery  
Commission Secretary

AYES: Antonini, Borden, Lee, Moore, Sugaya, and Miguel

NAYS: Olague

ABSENT:

ADOPTED: January 21, 2010



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary Planning Code Text Change HEARING DATE: JANUARY 14, 2010

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*Project Name:* Development Stimulus and Fee Reform

*Case Number:* 2009.1065T [Board File No.s 09-1251, 09-1252, and 09-1275]  
*Initiated by:* Mayor Newsom / Introduced October 27 and November 3, 2009  
Revised Ordinances [Board File No.s 09-1251-2 and 09-1275-2]  
Introduced December 15, 2009

*Staff Contact:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Reviewed By:* Lawrence Badiner, Assistant Director and  
Alicia John-Baptiste, Assistant Director

*90-day Deadline:* January 27 and February 3, 2010

*Recommendation:* Approval with Modifications

### CODE AMENDMENTS

The three proposed Ordinances introduced by Mayor Newsom comprise a legislative package intended to stimulate development and construction in San Francisco. The proposed package seeks to create opportunities to link payment of development impact fees to first construction permit, when loans are more readily available for contractors, while protecting the City's revenue stream of development impact and processing fees.

In brief the three Ordinances would:

1. **BF 091275/BF 091275-2 Development Impact and In-Lieu Fees** would create a new Article Four in the Planning Code to consolidate fee and in-lieu controls in one article; add Section 402 to provide that all impact fees and in-lieu fees will be collected by DBI prior to issuance of the first construction permit, with the option to defer payment to prior to issuance of the first certificate of occupancy in exchange for a deferral surcharge; provide that physical improvements would be confirmed by the regulating department prior to first certificate of occupancy; and where possible, create standard definitions, procedures, appeals, and reporting standards while deleting duplicative language.

The following fees would be placed in the new Article Four:

- Downtown Park Special Fund (Section 139);
- Van Ness and Market Downtown Residential Special Use District (Section 249.33);

- Housing Requirements for Large-Scale Development Projects, Jobs-Housing Linkage Program (Sections 313-313.15);
  - Child-Care Requirements for Office and Hotel Developments (Sections 314-314.8);
  - Inclusionary Affordable Housing Program (Sections 315-315.9);
  - Downtown Residential Community Improvements Fund and the SoMa Community Stabilization Fund (Section 318-318.9);
  - Housing Requirements for Residential Development Projects in the UMU Zoning Districts of the Eastern Neighborhoods and the Land Dedication Alternative in the Mission NCT District (Section 319-319.7);
  - Market and Octavia Community Improvements Fund (Sections 326-326.8);
  - Eastern Neighborhoods Public Benefit Fund (Section 327-327.6);
  - Balboa Park Community Improvement Fund (Sections 331-331.6);
  - Visitacion Valley Community Facilities and Infrastructure Fee (Sections 420 – 420.5.) and
  - Transit Impact Development Fee (Sections 331-311.6 and Chapter 36 of the Administrative Code).
2. **BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee** would amend the Building Code to establish a procedure for the Department of Building Inspection (DBI) to collect all development impact fees. The proposed Ordinance would ensure that fees are paid prior to the issuance of the first construction permit or allow the project sponsor to defer payment until issuance of first certificate of occupancy in exchange for paying a fee deferral surcharge. These fee procedures would be implemented by a new “Fee Collection Unit” within DBI that would ensure fee payment prior to issuance periods; would require a Project Development Fee Report prior to issuance of building or site permits; and would provide an appeal opportunity to the Board of Appeals.
3. **BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs** would amend Sections 313.4 and 315.5 and add 313.16 to add an alternative for both the Jobs Housing Linkage Program and the Residential Inclusionary Affordable Housing Program. The new option would allow a project sponsor to receive a “discount” of up to 33% of its obligation under either program in exchange for recording an Affordable Housing Transfer Fee Restriction on the property. This fee restriction would require 1% of the value of the property at every future sale to be paid to the Citywide Affordable Housing Fund.

### **The Way It Is Now: Fee Collection**

There are several development impact fees codified in the Planning Code and administered by various entities including the Planning Department, the Recreation and Parks Department, the Mayor’s Office of Housing, the Department of Children, Youth, and their Families, the Office of Economic and Workforce Development, the Board of Supervisors and the Planning Commission. In addition to the Planning Code, the Administrative Code and the State Educational Code also assess development impact fees that are controlled by the San Francisco Public Utilities Commission, the San Francisco Municipal Transportation Agency, and the San Francisco Unified School District. See Exhibit A: Chart of Development Impact Fees for more information on existing fees. Fees are typically collected at one of two points: either at Site Permit, or later at the Certificate of Occupancy. While the collection burden is currently shared by a host of agencies, including the Planning Department, DBI is responsible for issuing both the site permit and



certificate of occupancy permit. The reliance on multiple agencies for fee assessment and collection results in a sometimes complicated and often confusing process for project sponsors and staff.

#### The Way It Would Be: Fee Collection

Two of the proposed Ordinances [BF 091275 /BF 091275-2 Development Impact and In-Lieu Fees and BF 091251/ BF 091251-2 Development Fee Collection Procedure; Administrative Fee] make significant changes in the fee collection policy and procedures. The first Ordinance [BF 091275, Planning Code Amendment] would create a fee deferral mechanism while streamlining and consolidating the Planning Code fee requirements in one location, Article Four of the Planning Code. The second Ordinance [BF 091251, Building Code Amendment] would expand DBI's role; placing DBI in the fee collection process with responsibility for fee notification, reporting, collection, and tracking through a standardized process. The assessed fee amounts would be subject to appeal before the Board of Appeals. Together, the two Ordinances propose a uniform process that would help both project sponsors and the public understand the impact fees associated with each development. For the first time, the "gate-keeping" agency charged with issuing the permit would also be made responsible for fee collection. The new option to defer fee payment would be coupled with a "fee deferral surcharge" intended to preserve the City's revenue stream. This surcharge would be assessed at a "blended" rate of return that would combine rates reflecting what the City would have earned had it invested the monies and the increase to the cost of construction anticipated for building the infrastructure<sup>1</sup>.

The new fee assessment and collection process would be organized around the following four steps:

1. **Application Submittal**—The first step is the submission of Site or Building Permit applications by the project sponsor. After submittal, each fee assessing agency, for example Planning, MTA, the School District etc. would send an initial development impact requirement/fee estimate to the Fee Collection Unit in DBI. These development impact requirements/fees would be compiled in an easy to read list called a "Project Development Fee Report" that would be available to any member of the public upon request. The Project Development Fee Report would list the amount of each development impact requirement/fee, the legal authorization for the development impact requirement/fee, and contact information for the staff person responsible for determining the requirement.
2. **Site & Building Permit**—These initial permits enable demolition, grading, site preparation and appeal processes. No site or building permits would be issued unless and until the project sponsor has declared whether they intend to pay fees and/or provide in-kind benefits (where such options exist) and all relevant fee-assessing agencies have approved a final Project Development Fee Report. Up until issuance, the applicant could work with the Fee Collection Unit and any fee-assessing staff to resolve questions or disagreements regarding the contents of the Project Development Fee Report. If these could not be resolved, the applicant could seek formal redress through the appeals process, but only if the applicant made good faith efforts in writing prior to permit issuance. Once a building or site permit has been issued by DBI, a 15-day appeal period begins that would allow the project sponsor or any member of the public to appeal any of the development impact requirements or fees included in the Project Development Fee Report. A project sponsor could only file an appeal if they had made good faith efforts, in writing, to resolve the dispute with an assessing agency. Members of the public could appeal directly to the Board of Appeals without any prior efforts. If appealed to the Board of Appeals,

the jurisdiction of the Board would be limited to ensuring the accuracy of the calculations for assessed fees and development impact requirements. The Board of Appeals would not be empowered to make policy decisions to supersede, rescind or increase the fee or development impact requirements that have been legislated by the Board of Supervisors due to economic hardship or other reasons. Instead the Board of Appeals could only correct faulty calculations. Disputes over a reasonable relationship or "nexus" between the fee and specific projects would continue to be heard by the Board of Supervisors.

3. **First Construction Permit**— Any and all development impact fees would be due prior to issuance of the first construction permit unless the project sponsor elected to defer them to First Certificate of Occupancy by enrolling in the fee deferral program. The term "first construction permit"<sup>1</sup> refers to any building permit (addendum) issued after the site permit that would authorize substantial construction on a project. Interest (called a Fee Deferral Surcharge) would begin to accrue on all of the deferred fees beginning of the day that a project sponsor enrolled in the Fee Deferral Program but in any event no later than issuance of the construction permit. The fee deferral surcharge interest rate would be "locked-in" at this point based upon the City's current investment policies for 2-year assets<sup>2</sup> and would continue to accrue interest until the project sponsor pays the deferred fees, presumably when they are ready to pull the first Certificate of Occupancy.
4. **First Certificate of Occupancy**—This permit allows a property to be occupied (and sold or rented) for commercial or residential use. Under the new proposal, the first Certificate of Occupancy would not be issued by DBI until any deferred fees or certificates of completeness for in-kind contributions have been secured by DBI's Fee Collection Unit. Any changes to the project since publication of the final Project Development Fee Report would be reviewed and the development impact requirements or fee amounts would be corrected to reflect any material changes. If for any reason fees needed to be changed, a revised site or building permit would be issued and a new Project Development Fee Report that would also be made part of the public record and, again, would be subject to the appeal process.

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<sup>1</sup> The term "first construction permit" excludes permits authorizing general site preparation work, such as demolition, grading or shoring permits, but would include permits authorizing foundation work, for example. For projects seeking only a single building permit, the first construction permit is the building permit.

<sup>2</sup> BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee. This proposed Building Code Amendment, in Section 107A.13 shall be calculated monthly by the San Francisco Treasurer's Office as a blended interest rate comprised of 50% of the Treasurer's yield on a standard two year investment and 50% of the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator's Capital Planning Group and approved by the City's Capital Planning Committee consistent with its obligations under Section 409(b) of the San Francisco Planning Code. The Treasurer's yield on a standard two year investment shall be 60% of the Two Year U.S. FNMA Sovereign Agency Note Yield-to-Maturity and 40% of the Current Two-Year U.S. Treasury Note Yield-to-Maturity as quoted from the close of business on the last open market day of the month previous to the date when a project sponsor elects to defer the development fees owed on a development project..

**The Way It Is Now: Affordable Housing Fee Discount and Transfer Fee Restriction Alternative**

This proposed Ordinance [BF 091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs] concerns two existing fees: the Inclusionary Housing Ordinance (Sec. 315.6 of the Planning Code) and the Jobs-Housing Linkage Fee Ordinance (Sec. 313 et seq of the Planning Code). Currently, the Inclusionary Housing requirements can be satisfied by 1) building Below Market Rate (BMR) units on-site; 2) building BMR units off-site; or 3) payment of an in-lieu fee to the Mayor's Office of Housing (MOH). The Jobs-Housing Linkage requirements may also be satisfied through building BMR units or payment of a fee to MOH. The Inclusionary Housing program provides an in-lieu fee option based on the number of units that a developer would be required to provide as off-site units (that is generally, 20% of the total number of units in a project requiring 15% inclusionary on-site).

In-lieu fees contributed to the Citywide Affordable Housing Fund<sup>3</sup> are administered by MOH, providing a reliable source of income for subsidizing the production of BMR housing. In lieu fees from multiple projects are often bundled to provide sufficient funding to underwrite a single affordable housing project.

**The Way It Would Be: Affordable Housing Fee Discount and Transfer Fee Restriction Alternative**

The proposed Ordinance would provide project sponsors with a 33% reduction in the on-site, off-site in-lieu fees, and perhaps land dedication<sup>4</sup> requirements in exchange for recording an "Affordable Housing Transfer Fee Restriction" on their property. The restriction would require payment of 1.0% of the subject property's value into the Citywide Affordable Housing Fund at every future transfer of the property in perpetuity.<sup>5</sup> The legislation "authorizes but does not require" the City acting through MOH to record an Affordable Housing Transfer Fee Restriction on the property as a special form of a Notice of Special Restriction (NSR) in cooperation with the Assessor-Recorder's Office. The current draft of the proposed legislation allows property owners to pre-pay the "present value"<sup>6</sup> of the restriction at any time to remove the NSR, although the "present value of the restriction" is not reduced through previous transfer payments. The present value of the restriction would be calculated by MOH applying the same formula

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<sup>3</sup> Both the Inclusionary Housing and the Jobs-Housing Linkage program are indexed on the annual percent change in the Construction Cost Index (CCI) for San Francisco as published by Engineering News-Record.

<sup>4</sup> Although not specified in the existing ordinance, MOH and OEWD are currently discussing offering the discount to land dedication options *where* MOH would have the option to veto the discount if application of the discount would result a piece of property too small to feasibly develop.

<sup>5</sup> In the event that there is no transfer of a property subject to the restriction during the first 10 years, the property owner shall be required to contribute 1% of the assessed value at the time of the 10-year anniversary.

<sup>6</sup> Present value generally refers to a single number that expresses a flow of current and future income (or payments) in terms of an equivalent lump sum received (or paid) today. The present value depends on the rate of interest used (the discount rate).

developed by the Controller's Office for purposes of the legislation. The formula considers the current value of the property, the average appreciation rate for property values, average turnover rates, and the discount rate at time of payment.<sup>7</sup> However, based on feedback received from a variety of stakeholders, the Mayor's Office, OEWD and MOH have all agreed that this provision will be eliminated in subsequent amendments.

#### ISSUES AND CONSIDERATIONS: FEE COLLECTION PROCESSES

- For the first time, DBI, the "gate-keeping" agency charged with issuing building permits and certificates of occupancy would also be made responsible for development impact fee collection. This would greatly simplify the development impact fee assessment and collection process and ensure accountability. It would also improve monitoring and enforcement of development impact "in-kind" improvements.
- The new development impact fee collection process would improve transparency and understanding for the public and project sponsors while facilitating coordination among City agencies. Improvements to the process could result in less staff time, more clarity for project sponsors, and a more successful fee collection rate. The City has long discussed methods of improving fee collections, including a Controller's Study published in March 2008, which recommended a centralized collection point, among other improvements incorporated in the new legislation.
- OEWD, MOH, the City Attorney's Office, the Department of Public Works Street Use and Mapping Division and the Assessor-Recorder's Office have been working collaboratively to develop a special form of a Notice of Special Restriction (NSR) that would allow the Assessor-Recorder to collect the 1% transfer fee in a manner identical to how the Assessor-Recorder currently collects the transfer tax upon any transfer of title of the property. The likely method will include recordation of special symbol on all Assessor Block and Lot Maps that would flag every property subject to the transfer fee NSR so that the Assessor-Recorder may request payment of the 1% transfer fee prior to its recordation of the change in title. In this way, MOH's monitoring responsibilities are kept to a minimum. In the past, the Commission has expressed concern over the reliability of the mechanism of NSR for enforcement of conditions of approval. The stand-alone NSR coupled with map recordation is intended to address this concern.

#### ISSUES AND CONSIDERATIONS: FEE DEFFERRAL

- At the direction of the Mayor's Office, the Office of Economic and Workforce Development (OEWD) proposed the fee deferral program as part of a larger set of economic stimulus measures designed to spur job growth and incentivize development. The primary policy goal of the

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<sup>7</sup> Per proposed Section 313.16 of [BF 091252 Affordable housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linage Programs], calculation of the present value of the restriction shall be verified by the Controller and shall be assessed through these four variables 1) average sale price of the property; 2) average citywide turnover rate for the type of property; 3) the average citywide appreciation rate for the property; and 4) a commercially reasonable discount rate. Future cash flows derived from transfers are discounted at the discount rate.

deferral program is to improve the financial feasibility of development projects on the margin so that as macroeconomic conditions improve and construction financing becomes available, construction will commence sooner than it would under the current fee collection system. The economic benefits to the City of earlier construction starts include earlier increases in construction employment, property tax reassessments and transfer tax proceeds, all of which would benefit the City's General Fund and budget. Due to the broad range of economic factors that figure into a developer's decision to advance a project, neither OEWD or the Planning Department can provide an exact estimate of the actual number of "early starts" the City could expect under this program. Even if this package is adopted, analyzing the actual impact may not be possible. OEWD believes that these economic benefits to the City outweigh any potential disadvantages associated with the proposed deferral program. The Controller's draft estimate is that the economic impact of the legislation to defer infrastructure fees would on average produce a maximum of 50 additional units per year. The Controller's draft estimate of the economic impact of the legislation to discount affordable housing fees in exchange for a future sales transfer fee would reduce developer costs by 1.2% and therefore increase development by an estimated 20-25 units per year.

- Other California cities and counties have implemented impact fee deferral or even impact fee reduction programs. See Exhibit D, provided by the Office of Economic and Workforce Development for more information. According to the Exhibit, of the approximately 46 jurisdictions have enacted impact fee deferral programs since the start of the current economic crisis (Fall of 2008), 85% of those jurisdictions have legislated an "end-date" to the deferral program. None of these programs require payment of a Fee Deferral Surcharge. Approximately 18 have approved some form or impact fee reductions.
- In those instances when a project sponsor elects to enroll in the proposed Development Fee Deferral Program, the City will collect most impact fee revenues at a later date than under the current impact fee collection system.<sup>8</sup> Specifically, collection of those impact fees currently due at site permit would be delayed by approximately between 12-36 months, depending on the complexity and scale of the project.<sup>9</sup>
- The timing and implementation of capital projects is dependent on a host of factors, including the size, scale and complexity of the public improvements being funded and the rate of new development. For example, impact fees collected from one project today may need to be held by the Controller until sufficient funds have accrued from development projects to begin planning and construction of a larger-scale public infrastructure project. The inherent "lumpiness" in impact fee-based capital project funding may cause delays in implementation of development impact mitigations regardless of whether impact fees are collected at site permit or at first certificate of occupancy. Still, in other circumstances, the City may be able to spend impact fees collected earlier in the process when sufficient funds have accrued in an existing capital project account or the scope of an infrastructure project is small enough that the funds collected from

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<sup>8</sup> The notable exceptions are the Transit Impact Development Fee (TIDF) and portions of the PUC's water and sewer capacity charges, which are currently collected around final certificate of occupancy.

<sup>9</sup> A limited survey of less than 100 applications filed with DBI in 2009 showed a time period of 2.18 years between site permit and first certificate of occupancy.

one development project are sufficient to cover all of its costs. Because of the complexity of funding capital projects, it is difficult to assess the actual amount of time that the proposed fee deferral program would delay the City's infrastructure projects. Regardless, it is reasonable to assume that the proposed deferral program would increase the complexity of funding infrastructure projects in a timely manner and could result in delayed starts for detailed capital planning. In some circumstances, this delay may restrict the City's ability to fund and complete neighborhood infrastructure projects concurrently with the completion and occupancy of new development projects.

- An important component of the deferral program is the proposed Fee Deferral Surcharge, which is the interest rate that would be applied to any deferred fees under the proposed program until such fees are paid. A simple formula would set a rate equal to the annualized rate the San Francisco Treasurer's Office would realize if it invested all impact fee revenues for a two-year period consistent with City policies for such funds.<sup>10</sup> However, as noted above, not all impact fee revenues collected at site permit would be held in investment funds until issuance of the first certificate of occupancy. Ideally, some or all of the impact fees collected after issuance of the first construction permit could be expended on actual capital projects prior to issuance of the first certificate of occupancy. For those impact fees that would have been expended on actual capital projects *but for the deferral program* the appropriate measure of the cost of deferral would be the rate of construction cost inflation, since these fees would otherwise be expended on capital projects that would likely be increasing in cost because of the delay in impact fee collection. In response to feedback from the Department and because of the complexity involved in estimating the true cost of impact fee deferral, OEWD, the Controller and the City's Capital Planning Group have proposed a new blended Fee Deferral Surcharge rate. The revised Ordinance introduced on December 15, 2009 applies such a "blended" rate which is the average of the City Treasurer's floating investment rate and a floating annual San Francisco-specific construction cost index as determined by the Capital Planning Group. Similar to the proposed legislation, the fee deferral rate would be "locked-in" at the point in time when a project sponsor elects to defer impact fees and would apply on an annualized basis until the deferred fees are paid.
- Spending impact fee revenues early in the entitlement process exposes the City to the risk of having to provide a refund in the event that a project is cancelled or withdrawn due to financial hardship and the "impact" never materializes. Because of this, impact fee monies collected at site permit are subject to a "refund" period. Although impact fee refunds are uncommon, MOH recently had to refund over \$10M in in-lieu fees when two projects in Rincon Hill were cancelled and withdrew their site permits.

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<sup>10</sup> A complication to this calculation is the fact that construction costs typically rise faster than revenue interest rates. For instance, in the City's capital planning efforts, "cost of construction" is typically estimated at a 5% annual increase whereas the annual value of investment return is estimated at 3%. Under the City's current capital planning models, a "simple" formula to recapture only the potential revenue interest rates may have cost the City an estimated 2% annually. For this reason, the blended rate is preferred.

- The stated intent of Ordinance [BF091275 Development Impact and In-Lieu Fees] is to defer impact fee collection to stimulate development. Moving impact fee collection to a later date in the permit process would reduce the up-front costs associated with project development and also lower the costs of commencing the DBI site permit process. Further, OEWD states that deferring fee payment until issuance of first certificate of occupancy would decrease the carrying costs associated with financing these fees. This savings would improve developer pro-formas on the margin and in some circumstances may increase the likelihood of earlier construction. The Commission is asked to consider the economic benefits of the proposed fee deferral program in light of the potential delay identified above in the funding and timing of capital improvements associated with the deferred impact fees.
- OEWD and MOH developed the proposed Affordable Housing Transfer Fee option as a means to both improve the reliability and amount of funding available for affordable housing in the medium-term and to reduce the financial burden of the Inclusionary and Jobs-Housing Linkage Programs in the short-term to improve the financial feasibility of development projects. The Controller's Office has performed testing of the impacts BF 091252 would have on the City's affordable housing revenue stream. The complete analysis by the Controller's Office should be published in time for the Planning Commission hearing on January 14, 2010. In advance of that publication, attached to this report is Exhibit E: Draft Presentation by the Controller that estimates returns for the City under the Affordable Housing Transfer Fee Restriction Alternative for the Inclusionary and Jobs Housing Linkage Programs. The Controller projects that if a project sponsor the maximum discount of 33% of the required fees, the City could expect returns of 34%-80% due to the transfer fees over time in place of collecting the 33% at the time of development.
- Looking at this number in more detail, the attached Exhibit E: Draft Presentation by the Controller estimates that in exchange for deferring 33% of the fee at initial development, the eventual returns from the 1% transfer fee at future sales of the property could result in revenue of approximately 34% from office developments, 54-80% for condominium developments, and 47% for condominium-mapped apartments. Due to the expected lower turnover for office buildings, discounted fees offered to office developments may never recoup equivalent value. Overall, the City may collect more revenue in present value terms through a 1% sales transfer fee than the City would have collect if it simply applied its standard 100% affordable housing requirements.
- Unless the "present value" is pre-paid to lift the NSR, the Affordable Housing Transfer Fee Restriction would apply for the life of the project, upon every transfer. Therefore, the proposed program may generate revenue for the City's Affordable Housing Fund incrementally and smooth MOH's funding stream so that it is not as vulnerable to the boom and bust cycles of development for funding. The policy defers some immediate guaranteed in-lieu fee revenue or BMR production in exchange for accepting the risk of potentially greater long-term affordable housing transfer fee revenue in the future.
- Affordable housing advocates have long discussed the need for a permanent affordable housing funding source, including an additional one percent real estate transfer fee. The Mayor's Office of Housing (MOH) supports this proposal because it responds to this need and also improves

the financial feasibility of market-rate housing production. Attached in Exhibit C is a letter of support from the Mayor's Office of Housing.

- In addition to expected eventual returns, another important consideration is how long it will take the City to recoup discounted fees. Analysis by OEWD and the Controller's Office estimate that an average of 16 years would be required to compensate the City for the 33% discount granted at entitlement for the transfer fee-burdened property.<sup>11</sup>
- Notably, the bulk of the value of the 33% discount would be recaptured within the first few years. For instance, a condominium which discounted \$17,000 of affordable housing fees would have paid more than \$10,000 by year four of the program. This is due largely to the initial transfer fee that the original owner pays upon buying the unit from the developer/landowner. This would establish a change in policy in that a portion of affordable housing fees would be transferred from current landowners and developers to future owners. From discussions with economists, the transfer of this fee burden will probably not be recognized by future owners and may not be absorbed in the sale price.<sup>12</sup>
- While the Controller is currently revising the draft report based upon the input of several local real estate economists and non-profit affordable housing developers, the Department is interested in learning more about who is likely to participate in the programs, especially the affordable housing fee discount program. Who chooses to participate depends in part on the expected value of the units produced and the relative costs of the impact fees. Certain areas such as Rincon Hill and the Market & Octavia Downtown Residential SUD have higher affordable housing fees than other areas. Case studies produced by OEWD and the Controller indicate that the City is likely to benefit most in situations where the fees are relatively high and the average sales prices are higher. A higher rate of participate by those subject to higher fees is likely to occur and may skew the City's expectations for when those discounted fees would be recaptured through the sales transfer fee.
- The initial vetting of the controller's analysis by independent economists affirmed that the controller's estimates are reasonable. the economists did discuss that the assumptions are based on the best available information but small changes to any of the variables (turn-over rate, discount rate, etc.) would have a big impact.

## REQUIRED COMMISSION ACTION

The proposed Resolution is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

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<sup>11</sup> Assumptions in this estimate include: 10-year turn-over rate based upon recent years, an initial transfer fee at first sale, and a conservative discount rate that is the highest rate on the West Coast from Integra Realty Resources.

<sup>12</sup> In a perfectly functioning market, properties that are burdened with a transfer fee restriction would sale at lower prices so that landowners and developers would absorb some of the costs of the transfer fee. However, there has been evidence that purchasing behavior is not always rational and buyers may not appropriately seek lower prices for properties with a transfer fee restriction. Robert J. Shiller (2005). Irrational Exuberance, 2nd ed. Princeton University Press. ISBN 0-691-12335-7.



## RECOMMENDATION

The proposed Ordinances make changes to impact fee collection processes that are aligned with current reforms in process.

1. The Department strongly recommends approval of the fee collection changes associated with BF 091275 /BF 091275-2 Development Impact and In-Lieu Fees and BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee.
2. The Department recommends approval with modifications of the fee deferral for development impact fees as described in BF 091275 /BF 091275-2 Development Impact and In-Lieu Fees and BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee.
3. The Department recommends approval with modifications of the legislation, to create an affordable housing transfer fee restriction as described by BF 091252.
4. In addition to the substantive changes described in this report, further consolidation of definitions and minor modifications will be described in Exhibit B: Technical Modifications. This Exhibit B will be released later, but prior to the January 14<sup>th</sup>, 2010 hearing.

## BASIS FOR RECOMMENDATIONS

The basis for approval includes:

- Within the current economic climate, the legislation taken as a whole is an incentive to spur some development to occur earlier than otherwise. The policy tradeoff being considered is between a delay in receipt of revenues to the city versus some new development occurring earlier than would otherwise be the case. While the exact amount of development that would occur earlier or the amount of time that would be "saved" cannot be precisely predicted, it does appear that some development would be incentivized to occur earlier. Thus, the city's delays in receiving revenues would be offset by earlier projects and by the increased revenues over time.
- The proposal would result in better gate-keeping with consolidation of fee collection & permit issuance under one agency;
- Administratively, the proposal represents a dramatic improvement in fee collection that the Planning Department and DBI are both comfortable implementing;
- The proposal establishes more uniform procedures in a consolidated Article Four resulting in better understanding for the public, project sponsors and City departments;
- The proposal would add transparency resulting in an improved process for developers and the public;
- Most importantly, the revisions to the fee collection process greatly increase the City's ability to collect fees; and
- The proposal for fee deferrals has been reviewed by the MOH and the Controller. The proposal has been endorsed by MOH and the Controller's Office has provided data projecting that overall revenue for affordable housing will not be lost and in fact substantial sums could be gained over the medium- to long-term.

In San Francisco, impact fees have traditionally been collected when development commences, to ensure that the City can build the necessary infrastructure to support new residents and employees within a

reasonable amount of time. The proposed deferral program may not reduce the City's ability to provide the necessary infrastructure, however it could cause infrastructure to be staggered, disassociating new development and the related infrastructure. Given the current economic situation, the Commission is being asked to evaluate this potential impact to infrastructure funding against the potential benefit of spurring stalled construction.

### RECOMMENDED MODIFICATIONS ACCOMPLISHED IN THE REVISED ORDINANCES

The Department has worked closely with OEWD, DBI, SFMTA, and the PUC on review of the initial Ordinances and is pleased with the modifications included in the revised Ordinances introduced on December 15, 2009. Some of these changes include:

1. **Modification of the proposed Fee Deferral Surcharge to a blended rate based on 50% of the City's floating investment rate and 50% of a floating construction cost index as determined by the Controller's Office.** The initial legislation established a rate equal to the annualized rate the San Francisco Treasurer's Office would realize if it invested all impact fee revenues for a two-year period consistent with City policies for such accounts. However, as noted above, not all impact fee revenues collected at site permit would be held in investment accounts until issuance of the first certificate of occupancy. Ideally, some or all of the impact fees collected after issuance of the first construction permit could be expended on actual capital projects prior to issuance of the first certificate of occupancy. For those impact fees that would have been expended on actual capital projects *but for the deferral program* the appropriate measure of the cost of deferral would be the rate of construction cost inflation in effect at the time, since these fees would otherwise be expended on capital projects that would likely be increasing in cost because of the delay in impact fee collection. For this reason, the Department believes the revised Ordinance that utilizes a blended rate combining the cost of construction with the investment for calculation of the fee deferral surcharge is more appropriate.
2. **Clarification of the limited scope of the Board of Appeals jurisdiction.** Fees legislated by the Board of Supervisors should not be altered by the Board of Appeals. There are currently mechanisms to adjust the fee amounts in instances where the nexus is insufficient through appeal to the Board of Supervisors. These mechanisms for fee adjustment should not be duplicated at the Board of Appeals. The revised Building Code amendment is quite clear on the appropriate jurisdiction for the Board of Appeals.
3. **Creation of a mechanism to provide for universal indexing of fees for cost of inflation across all fee programs.** Currently Market and Octavia, Eastern Neighborhoods, and Balboa Park fees are indexed to inflation in construction costs. This mechanism insures that the fees continue to effectively fund the infrastructure at a consistent rate. Not all of the existing programs included this mechanism. Consolidation of all fees into Article Four presented the opportunity to correct this omission from older fees and the revised Ordinance accomplishes this in Section 409(b).
4. **Ensure fee waiver opportunities are not increased through the proposal.** Under current controls, each existing fee has its own unique "fee waiver" procedures. The Department encourages a consolidation of these multiple fee waivers into a coherent mechanism to the

greatest degree possible. The current proposal, however, does not produce one waiver procedure but instead copies each existing waiver opportunity into a "waiver" section so that the avenues to waive fees have been multiplied. If one coherent waiver mechanism cannot be developed, each fee should maintain its own unique but not duplicative waiver procedure. One particularly problematic waiver described in Section 405 would expand a prorated refund of up to 50 years that currently applies to the Downtown Park Fee (Sect. 139(i)) fee to all fees.

## ADDITIONAL MODIFICATIONS REQUESTED

In addition to the above changes that have been made in the revised Ordinances, the Department recommends additional modifications as described below:

1. Clarify that this new ability to defer fees is offered only to those projects that have not yet paid development impact fees. Since the adoption of the Area Plans, City agencies have been working to plan and build infrastructure for new development. Collected impact fees have been programmed and are needed to complete planned infrastructure. The administrative burden of providing *fee refunds* to then allow *fee deferrals* is disproportionate to the relative benefit to the projects that fall within in this category. Further, DBI has advised that offering refunds would be administratively infeasible.
2. Correct the ordinance to ensure that each of the effective dates for individual impact fee programs are the original date of those programs and not the effective date of this new ordinance. This change would facilitate administration of the various fee programs, especially in the event that refunds are requested. The original effective dates that should be noted in Article Four are as follows:
  - Section 249.33 Van Ness and Market Downtown Residential Special Use District FAR Bonus & the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Program both have an original effective date of 5/30/2008;
  - Section 313 Affordable Housing Job/Housing Linkage Fee has an effective date of 3/28/1996;
  - Section 315 Market & Octavia Affordable Housing Fee & Section 326.3-6 Market & Octavia Community Benefits Fee both have an effective date of 5/30/2008;
  - Section 318 Rincon Hill Community Infrastructure Impact Fee & SoMa Community Stabilization Fee both have effective date of 8/19/2005;
  - Section 319.7 Visitacion Valley Community Facilities and Infrastructure Fee has an effective date of 11/18/2005;
  - Section 327 Eastern Neighborhoods (Mission) has an effective date of 12/19/2008;
  - Section 331 Balboa Park Fee has an effective date of 4/17/2009; and
  - Administrative Code Chapter 38 Transit Impact Development Fee was originally enacted 1981 and a major revision became effective in 2004. Both of these dates have implications to pipeline projects and should be maintained.

For the remaining fees (Section 139 Downtown Park Fee, Section 149 Downtown C-3 Artwork, Section 314 Childcare, Section 315 Inclusionary Housing Fee, State Educational Code Section 17620 School Impact Fee, Administrative Code Sewer Connection Fee and Wastewater Capacity Charge), the Department requests that OWED or the City Attorney research the original effective

date for inclusion or in the event that cannot be determined use a de facto effective date of 1985 to ensure that no pipeline projects are exempted from fees.

3. **Maintain SFMTA's role as "implementer" of the TIDF.** This fund has been implemented by SFMTA with consultation of the Planning Department, and should remain so. Any changes which would place planning staff into a mediator role between a project sponsor and the assessment of fees or implementation of the program should be avoided. The proposed Ordinance establishes that "MTA is empowered to adopt such rules, regulations, and administrative procedures as it deems necessary to implement this Section 411.1 et seq. In the event of a conflict between any MTA rule, regulation or procedure and this Section 411.1 et seq., this Section ordinance shall prevail." The Department would request that the City Attorney explore adding further text to this Section to exempt this Section from the typical authority conveyed to the Zoning Administrator.
4. **Remove changes to procedures for in-kind contributions until the changes have been vetted with the agencies responsible for monitoring each in-kind contribution.** While the fee amendments contained in Article Four currently exist in the Planning Code and/or the Administrative Code, other agencies are responsible for the administration and monitoring of these contributions. In-kind provisions such as childcare or street-improvements must meet specifications that only DCYF or DPW are qualified to evaluate and should not be the responsibility of the Planning Department.
5. **Tighten the procedures around the "Affordable Housing Transfer Fee Restriction".** The proposed Ordinance should be amended to require the Fee Unit in DBI to be presented with the required NSR at a specific point such as "First Construction Permit". In addition MOH and the Fee Collection Unit in DBI should be required to (instead of authorized to) record separate NSRs on subsequent subdivisions of the property.
6. **Include all fee requirements in the new process.** Currently the proposal does not include the two alternative means of satisfying the open space requirement in South of Market and Eastern Neighborhoods by paying in-lieu fees identified in Section 135.3 (d) and 135.3 (e) as well as the payment in cases of a variance or exception to the open space requirement in Eastern Neighborhoods required by Section 135(j). Section 143, Street Tree Requirements, requires a type of physical improvement that according to Article 16 of the Public Works Code can be satisfied as a fee payment when utilities or other barriers prevent planting of trees. DBI's Fee Unit should be made aware of the street tree requirement at submittal for inclusion in the "Project Development Fee Report". The required planting or payment of the in-lieu fee should be confirmed prior to first certificate of occupancy.
7. **Provide further consolidation of fee "definitions".** The proposed Ordinance strives to consolidate fee-specific definitions to the greatest degree possible. While the revised Ordinance successfully added further consolidation of definitions, the current draft still contains a large amount of definitions that reside outside of the universal fee definition section in Section 401. The Department will provide the Commission with proposed consolidation of additional definitions at the January 14<sup>th</sup>, 2010 hearing.

8. **Include a legislative end-date for fee deferrals.** As this legislative package is intended to counter the difficult economic times, an end-date should be added where the City would no longer allow the deferral of fees. In lieu of pre-determining the date, the legislation should be amended to expire under one of the following markers 1) once a certain number of residential units and/or square foot of commercial development has been built; 2) the Controller has determined that a standard economic indicator has been reached; or alternatively, 3) the legislation could require review of the deferral programs at regular intervals before both the Planning Commission and the Land Use Committee of the Board of Supervisors.

### ENVIRONMENTAL REVIEW

The combined Ordinances to amend the Planning Code, the Building Code and the Administrative Code would result in no physical impact on the environment. The proposed Ordinances are exempt from environmental review under Section 15060(c)(2) and 15273 of the CEQA Guidelines.

### PUBLIC COMMENT

As of the date of this report, the Planning Department has received no letters in support or opposition to the proposal from the public. Planning Staff has met with Calvin Welch, the Executive Director of Council of Community Housing Organizations. This council is in the process of drafting their position paper.

### OTHER CITY BODY COMMENT

As mentioned, MOH endorses the proposed Ordinance [BF 091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs]. A letter of support from MOH is attached in Exhibit C. On December 15, the Market & Octavia CAC passed a resolution opposing the proposed Ordinance [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees]. That letter of opposition is attached in Exhibit F. On December 16 the Building Inspection Commission passed a resolution supporting proposed Ordinance [BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee] that letter of support is attached in Exhibit G.

<b>RECOMMENDATION:</b> <b>Approval with Modifications</b>
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Attachments & Exhibits:

Exhibit A: Development Impact Fee Chart

~~NOTE: Exhibit B: Technical Modifications/ Definition Consolidation – To be released at a later date.~~

Exhibit C: Letter of Support from the Mayor's Office of Housing

Exhibit D: Survey of other fee deferral programs in California

Exhibit E: Draft Presentation by the Controller's Office

Exhibit F: Resolution of Opposition from Market & Octavia CAC

Exhibit G: Resolution of Support from the Building Inspection Commission

Attachment A: Draft Planning Commission Resolution

Attachment B: Draft Board of Supervisors Ordinance BF 091275 Development Impact and In-Lieu Fees

Attachment C: Draft Board of Supervisors Ordinance BF 091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs

Attachment D: Draft Board of Supervisors Ordinance BF 091251 Development Fee Collection Procedure; Administrative Fee