

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 (Fee Deferral Program), which option shall expire after three years unless further extended; to require the Planning Commission to hold a hearing prior to expiration of the Fee Deferral Program to review its effectiveness and make recommendations to the Board of Supervisors; 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 July 1, 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 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, whichever applies. 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 of 85 percent of the total amount of fees dues, or 80 percent of the total amount of fees due if the project is subject to payment of a neighborhood infrastructure impact development fee, 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. If the project is not subject to any of the six neighborhood

infrastructure development fees listed, the 15 percent of the fees not deferred shall be deposited into the applicable fee account or, if there is more than one such account, divided equally among and deposited into all the applicable fee accounts; if the project is subject to one of the six neighborhood infrastructure development fees, the entire 20 percent of the pre-paid fees shall be deposited into the applicable neighborhood infrastructure impact fee account(s). This deferral option is available only to project sponsors who have not already paid the fee, and shall terminate on July 1, 2013 unless the Board of Supervisors extends the Fee Deferral Program. Before July 1, 2013, the Planning Commission must hold a hearing to review the effectiveness of the Fee Deferral Program and make a recommendation to the Board of Supervisors whether to continue, modify, or terminate the Program.

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 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 a significant portion 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 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.