

1 [Amendment to the Visitacion Valley Fee Ordinance.]

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3 **Ordinance amending Planning Code Sections 319.2 and 319.3 of the Visitacion Valley**
4 **Community Facilities and Infrastructure Fee and Fund ordinance to set a lower fee level**
5 **of \$3.00 per square foot for principally permitted projects that do not require material**
6 **General Plan, Planning Code or Zoning Map amendments, and making findings**
7 **including findings under the California Environmental Quality Act.**

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

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

12 Section 1. Findings

13 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
14 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
15 Planning Commission Resolution No. _____, and incorporates such reasons
16 herein by reference. A copy of said Planning Commission Resolution is on file with the Clerk
17 of the Board of Supervisors in File No. _____.

18 (b) The Board of Supervisors finds that this ordinance is in conformity with the
19 General Plan, amended in the companion legislation, and the Priority Policies of Planning
20 Code Section 101.1 for the reasons set forth in Planning Commission Resolution No.
21 _____, and hereby incorporates those reasons by reference.

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

3 (d) The Board of Supervisors finds that the Visitacion Community Valley Community
4 Facilities and Infrastructure Fee was originally intended to apply to four large sites targeted for
5 substantial changes of use, as stated in Planning Code Section 319.1. Each of these four
6 sites then required, or still requires, material amendments to the General Plan, Planning Code
7 and/or Zoning Maps or a conditional use authorization to facilitate residential developments.
8 In contrast, residential development may occur at other sites that are also subject to the
9 Visitacion Community Valley Community Facilities and Infrastructure Fee but which are
10 principally permitted and which do not require material amendments to the General Plan,
11 Planning Code and/or Zoning Maps or a conditional use authorization.

12 The Board of Supervisors finds that new residential development projects that are
13 "principally permitted" and thus, for purposes of this ordinance, do not require material
14 amendments to the General Plan, Planning Code and/or Zoning Maps or a conditional use
15 authorization will have a lesser impact on Visitacion Valley's community facilities and
16 infrastructure, and will generate a lesser need for community improvements as the
17 neighborhood's population grows as a result of such new residential development. Lesser
18 new investments in community infrastructure, including active recreational spaces and other
19 public services, are necessary to mitigate the impacts of new residential development that are
20 principally permitted.

21 Section 2. The San Francisco Planning Code is hereby amended by amending
22 Sections 319.2 and 319.3, to read as follows:

23 **SEC. 319.2. DEFINITIONS**

24 The following definitions shall govern this ordinance:
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1 (a) "Community facilities" shall mean all uses as defined under Section 209.4(a) of
2 this Code.

3 (a-1) "Material General Plan or Planning Code Amendment" shall mean an amendment to
4 the City's General Plan, Zoning Maps and/or the text of the Planning Code related to the project
5 approvals for the residential development project that (1) results in a net increase in the number of
6 permissible residential units, or (2) results in a material increase in the net permissible occupiable
7 square feet of residential use. For purposes of subsection (2) above, a material increase shall mean an
8 increase of five (5) percent or more, or an increase in 10,000 square feet or more, whichever is less.

9 (b) "Net addition of occupiable square feet of residential use" shall mean occupied
10 floor area, as defined in Section 102.10 of this Code, including bathrooms provided as part of
11 dwelling units, to be occupied by or primarily serving, residential use excluding common areas
12 such as hallways, fitness centers and lobbies, less the occupied floor area in any structure
13 demolished or rehabilitated as part of the proposed residential development project which
14 occupied floor area was used primarily and continuously for residential use and was not
15 accessory to any use other than residential use for at least five years prior to Planning
16 Department approval of the residential development project subject to this Section, or for the
17 life of the structure demolished or rehabilitated, whichever is shorter.

18 (b-1) "Principally permitted project" for purposes of this ordinance only shall mean a
19 residential development project that does not require conditional use authorization or a planned unit
20 development permit.

21 (c) "Residential development project" shall mean any new construction, addition,
22 extension, conversion or enlargement, or combination thereof, of an existing structure which
23 includes any occupied floor area of residential use and which has twenty (20) residential units
24 or more; provided, however, that for projects that solely comprise an addition to an existing
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1 structure which would add occupied floor area in an amount less than 20 percent of the
2 occupied floor area of the existing structure, the provisions of this Section shall only apply to
3 the new occupied square footage.

4 (d) "Residential use" shall mean any structure or portion thereof intended for
5 occupancy by uses as defined in Section 890.88 of this Code and shall not include any use
6 which qualifies as an accessory use, as defined and regulated in Sections 204 through 204.5.

7 (e) "Sponsor" shall mean an applicant seeking approval for construction of a
8 residential development project subject to this Section and such applicant's successors and
9 assigns.

10 (f) "Townhome" shall mean a dwelling unit that: (i) either is a freestanding building,
11 or shares only walls with other dwelling units; and (ii) has an entrance directly on a sidewalk
12 used by members of the public or residents of the residential development project.

13 "Townhome" shall not mean a dwelling unit of any type located on a podium over garage,
14 community facility, commercial or other space.

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

20 **SEC. 319.3. APPLICATION.**

21 (a) General Application: This ordinance shall apply to all residential development
22 projects that

23 (1) are located in Visitacion Valley; and
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1 (2) have not filed an application for a building permit, site permit, conditional use,
2 planned unit development, environmental evaluation, zoning map amendment or general plan
3 amendment prior to September 1, 2003.

4 (b) Application to Townhomes: Prior to the issuance by the Director of DBI of the
5 first building permit for a Townhome that is part of a residential development project, the
6 Sponsor shall pay to the Treasurer half of the Visitacion Valley Community Facilities and
7 Infrastructure Fee ("Fee") of \$4.58 for each net addition of occupiable square feet of
8 residential use within the Townhome for which the building permit is sought. The Sponsor
9 shall pay to the Treasurer the other half of the Fee prior to the issuance by the Director of DBI
10 of the first certificate of occupancy for such Townhome.

11 (c) Application to Other Residential Development Projects: Prior to the issuance by
12 the Director of DBI of the first certificate of occupancy for any building other than a Townhome
13 that is part of a residential development project, the Sponsor shall pay to the Treasurer the
14 entire Fee of \$4.58 for each net addition of occupiable square feet of residential use within the
15 building for which the certificate of occupancy is sought. Notwithstanding the foregoing, where
16 the residential development project is both a principally permitted project and does not require a
17 Material General Plan or Planning Code Amendment, the Fee shall be \$3.00 for each net addition of
18 occupiable square feet of residential use within the building for which the certificate of occupancy is
19 sought. The option to take advantage of the \$3.00 fee for projects that qualify as stated above shall only
20 be available, unless reauthorized by the Board of Supervisors, for projects that receive a building
21 permit for the project on or before December 31, 2007.

22 (d) Credits for In-kind Improvements:

23 (1) Credit for On-Site Community Facilities: In its review of a proposed residential
24 development project subject to this ordinance, the Planning Commission and Board of
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1 Supervisors shall apply the planning standard of 2.29 square feet of community facilities
2 space for each new resident projected at the residential development project to calculate the
3 residential development project's allocation of community facilities space. The Sponsor shall
4 receive a credit against the Fee of \$535 per square foot of community facilities space
5 provided on-site within the boundaries of the residential development project, provided that
6 such credit shall not exceed \$2.24 multiplied by the net addition of occupiable square feet of
7 residential use in the residential development project. Notwithstanding the foregoing, where the
8 residential development project is subject to the Fee in the amount of \$3.00 because it is principally
9 permitted and does not require a Material Zoning Map or Planning Code Text Amendment, the
10 Planning Commission and the Board of Supervisors may not reduce the Fee based on the on-site
11 provision of community facilities space.

12 (2) Credit for Improvements to Blanken Avenue: The Planning Commission or the
13 Board of Supervisors may reduce the Fee described in this Section for specific residential
14 development proposals in cases where the Sponsor has entered into an agreement with the
15 City, in form acceptable to the City Attorneys' Office, to provide in-kind improvements to
16 Blanken Avenue. For the purposes of calculating the total value of the in-kind community
17 improvements, the project sponsor shall provide the Planning Department with a cost estimate
18 for the proposed in-kind improvements from two independent contractors. Based on these
19 estimates, the Director of Planning shall determine their appropriate value and the Planning
20 Commission or the Board of Supervisors may reduce the Fee assessed to that project
21 proportionally. The Planning Commission or the Board of Supervisors may not reduce the ~~f~~Fee
22 by an amount greater than the amount that would be the Sponsor's contribution toward the
23 Blanken Avenue improvements if the Sponsor were to pay the Fee. Notwithstanding the
24 foregoing, where the residential development project is subject to the Fee in the amount of \$3.00
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1 because it is principally permitted and does not require a Material Zoning Map or Planning Code Text
2 Amendment, the Planning Commission and the Board of Supervisors may not reduce the Fee based on
3 in-kind improvements to Blanken Avenue.

4 (e) Treasure's Certification: Upon payment of the Fee to the Treasurer as required
5 under this Section and upon request of the Sponsor, the Treasurer shall issue a certification
6 that the Fee has been half or fully paid, as the case may be. The Sponsor shall present such
7 certification to the Planning Department and DBI prior to the issuance by DBI of (i) the first site
8 permit for each Townhome that is part of a residential development project, and (ii) the first
9 certificate of occupancy for each building that is part of a residential development project, as
10 the case may be. DBI shall not issue such building permit or first certificate of occupancy
11 without the Treasurer's certification as described above. Any failure of the Treasurer, DBI, or
12 the Planning Department to give any notice under this Section shall not relieve a Sponsor
13 from compliance with this Section. Where DBI inadvertently issues a building permit or a first
14 certificate of occupancy without payment of the Fee or portion thereof as required by this
15 Section, DBI shall not issue any further certificates of occupancy for the residential
16 development project without notification from the Treasurer that the Fee or portion thereof as
17 required by this Section has been paid. The procedure set forth in this Subsection is not
18 intended to preclude enforcement of the provisions of this Section under any other section of
19 this Code, or other authority under the laws of the State of California.

20 (f) Waiver or Reduction:

21 (1) A project applicant of any project subject to the requirements in this Section may
22 appeal to the Board of Supervisors for a reduction, adjustment, or waiver of the requirements
23 based upon the absence of any reasonable relationship or nexus between the impact of
24 development and the amount of the fee charged.

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1 (2) A project applicant subject to the requirements of this Section who has received
2 an approved building permit, conditional use permit or similar discretionary approval and who
3 submits a new or revised building permit, conditional use permit or similar discretionary
4 approval for the same property may appeal for a reduction, adjustment or waiver of the
5 requirements with respect to the square footage of construction previously approved.

6 (3) Any such appeal shall be made in writing and filed with the Clerk of the Board no
7 later than 15 days after the date the Sponsor is required to pay to the Treasurer the fee as
8 required in this Section. The appeal shall set forth in detail the factual and legal basis for the
9 claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the appeal
10 at the hearing within 60 days after the filing of the appeal. The appellant shall bear the burden
11 of presenting substantial evidence to support the appeal, including comparable technical
12 information to support appellant's position. The decision of the Board shall be by a simple
13 majority vote and shall be final. If a reduction, adjustment, or waiver is granted, any change in
14 use within the project shall invalidate the waiver, adjustment, or reduction of the fee. If the
15 Board grants a reduction, adjustment or waiver, the Clerk of the Board shall promptly transmit
16 the nature and extent of the reduction, adjustment or waiver to the Treasurer.

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18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 Susan Cleveland-Knowles
22 Deputy City Attorney

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