

1 [Building Code - Development Fee Collection Procedure and Administrative Fee]

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3 **Ordinance amending the San Francisco Building Code by amending Section 107A.13 to**
4 **modify the method of calculating the development fee deferral surcharge rate and to**
5 **clarify when a project sponsor may elect to defer the payment of development impact**
6 **and in-lieu fees, adopting environmental finding.**

7 NOTE: Additions are single-underline italics Times New Roman;
8 deletions are ~~strike-through italics Times New Roman~~.
9 Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough-normal~~.

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

11 Section 1. Environmental Finding. The Planning Department has determined that the
12 actions contemplated in this ordinance comply with the California Environmental Quality Act
13 (California Public Resources Code Section 21000 et seq.). Said determination is on file with
14 the Clerk of the Board of Supervisors in File No. 101075, and is incorporated
15 herein by reference.

16 Section 2. The San Francisco Building Code is hereby amended by amending Section
17 107A.13, to read as follows:

18 107A.13 Development Impact and In-Lieu Fees.

19 107A.13.1 Definitions. (a) The following definitions shall govern interpretation of this
20 Section:

21 (1) "City" shall mean the City and County of San Francisco.

22 (2) "Department" shall mean the Department of Building Inspection.

23 (3) "Development fee" shall mean either a development impact fee or an in-lieu fee.

24 It shall not include a fee for service or any time and material charges charged for reviewing or
25 processing permit applications.

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1 (4) "Development impact fee" shall mean a fee imposed on a development project
2 as a condition of approval by the various departments and agencies of the City and levies
3 against development projects by the San Francisco Unified School District under Section
4 17620 of the California Education Code and other provisions of State law to mitigate the
5 impacts of increased demand for public services, facilities or housing caused by the
6 development project that may or may not be an impact fee governed by the California
7 Mitigation Fee Act (California Government Code Section 66000 et seq.)

8 (5) "Development impact requirement" shall mean a requirement to provide physical
9 improvements, facilities or below market rate housing units imposed on a development project
10 as a condition of approval to mitigate the impacts of increased demand for public services,
11 facilities or housing caused by the development project that may or may not be governed by
12 the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

13 (6) "Development project" shall mean a project that is subject to a development
14 impact or in-lieu fee or development impact requirement.

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

18 (8) "First construction document" shall mean the first building permit issued for a
19 development project or, in the case of a site permit, the first building permit addendum issued
20 or other document that authorizes construction of the development project. Construction
21 document shall not include permits or addenda for demolition, grading, shoring, pile driving, or
22 site preparation work.

23 (9) "In-lieu fee" is a fee paid by the project sponsor in lieu of complying with a City
24 requirement that is not a development impact fee within the meaning of the Mitigation Fee Act.

1 (10) "Neighborhood Infrastructure Seed Fund" shall mean the fund or funds
2 established by the Controller's Office for the purpose of collecting the 20 percent pre-paid
3 portion of the development fees intended to fund pre-development work on any neighborhood
4 infrastructure project funded by any of the six neighborhood infrastructure impact
5 development fees listed in Subsection 107A.13.13.1. In addition, third-party grant monies or
6 loans may also be deposited into this fund for the purpose of funding pre-development or
7 capital expenses to accelerate the construction start times of any neighborhood infrastructure
8 project funded by any of the six neighborhood infrastructure impact development fees listed in
9 Subsection 107A.13.13.1.

10 (11) "Project sponsor" or "sponsor" shall mean an applicant seeking approval for
11 construction of a development project subject to this Section, such applicant's successor and
12 assigns, and/or any entity which controls or is under common control with such applicant.

13 (12) "Unit" shall mean the Department's Development Fee Collection Unit.

14 107A.13.2 Collection by Department. The Department shall be responsible for
15 collecting all development impact and in-lieu fees, including (a) fees levied by the San
16 Francisco Unified School District if the District authorizes collection by the Department, and
17 (b) fees levied by the San Francisco Public Utilities Commission, if the Commission's General
18 Manager authorizes collection by the Department, deferral of payment of any development
19 fee, and/or resolution of any development fee dispute or appeal in accordance with this
20 Section 107A.13.

21 107A.13.3 Timing of development fee payments and satisfaction of development
22 impact requirements.

23 (a) All development impact or in-lieu fees owed for a development project shall be
24 paid by the project sponsor prior to issuance of the first construction document; provided,
25

1 however, that the project sponsor may elect to defer payment of said fees under Section
2 107A.13.3.1.

3 (b) Any development impact requirement shall be completed prior to issuance of the
4 first certificate of occupancy for the development project.

5 107A.13.3. Fee Deferral Program; Development Fee Deferral Surcharge. A project
6 sponsor may elect to defer payment of any development impact or in-lieu fee collected by the
7 Department to a due date prior to issuance by the Department of the first certificate of
8 occupancy; provided, however, that the project sponsor shall pay 15 percent of the total
9 amount of the development fees owed prior to issuance of the first construction document. If a
10 project is subject to one of the six neighborhood infrastructure impact development fees listed
11 in Subsection 107A.13.3.1.1, the project sponsor shall pay 20 percent of the total amount of
12 the development fees owed prior to issuance of the first construction document. These pre-
13 paid funds shall be deposited as provided in Subsection 107A.13.3.1.1 below. A project
14 sponsor that received project approval prior to July 1, 2010 and has not yet paid a development impact
15 or in-lieu fee may elect to defer payment under the provisions of this Section notwithstanding a
16 condition of approval that required the fee to be paid prior to issuance of a building or site permit.

17 This option to defer payment may be exercised by (1) submitting a deferral request to
18 the Department on a form provided by the Department prior to issuance of the first
19 construction document, and (2) agreeing to pay a Development Fee Deferral Surcharge. This
20 deferral option shall not be available to a project sponsor who paid the fee prior to the
21 operative date of July 1, 2010; the project sponsor's reapplication for a building or site permit after
22 expiration of the original permit and refund of the development fees paid shall not authorize the project
23 sponsor to elect the deferral option. The deferral option shall expire on July 1, 2013 unless the
24 Board of Supervisors extends it.

1 107A.13.3.1.1. Deposit of pre-paid portion of deferred development fees. If a
2 development project is not subject to one of the six neighborhood infrastructure impact fees
3 listed below, the pre-paid portion of the development fees shall be deposited into the
4 appropriate fee account. If there is more than one fee account, the pre-paid portion of the fees
5 shall be apportioned equally.

6 If a development project is subject to one of the six neighborhood infrastructure impact
7 development fees listed below, the entire 20 percent development fee pre-payment shall be
8 deposited in the appropriate neighborhood infrastructure impact fee account. These pre-paid
9 funds shall be dedicated solely to replenishing the Neighborhood Infrastructure Seed Fund for
10 that specific neighborhood infrastructure impact fee account. In no event shall a neighborhood
11 infrastructure impact fee specific to one Area Plan be mixed with neighborhood infrastructure
12 impact fees specific to a different Area Plan. If the 20 percent development fee pre-payment
13 exceeds the total amount owed for the neighborhood infrastructure impact fee account, the
14 remaining pre-paid portion of the 20 percent development fee pre-payment shall be
15 apportioned equally among the remaining applicable development fees.

16 The neighborhood infrastructure development fees subject to the 20 percent pre-
17 payment provision of this Subsection 107A.13.3.1.1 are as follows: (1) the Rincon Hill
18 Community Infrastructure Impact Fee, as set forth in Planning Code Section 418.3(b)(1); (2)
19 the Visitacion Valley Community Facilities and Infrastructure Fee, as set forth in Planning
20 Code Section 420.3(b); (3) the Market and Octavia Community Infrastructure Fee, as set forth
21 in Planning Code Section 421.3(b); (4) the Balboa Park Community Infrastructure Impact Fee,
22 as set forth in Planning Code Section 422.3(b); (5) the Eastern Neighborhoods Infrastructure
23 Impact Fee, as set forth in Planning Code Section 423.3(b); and (6) the Van Ness and Market
24 Neighborhood Infrastructure Impact Fee, as set forth in Planning Code Section 424.3(b)(ii).

1 107A.13.3.2 Payment of development fees; payment and calculation of Development
2 Fee Deferral Surcharge. Except for any pre-paid fees, all deferred development fees
3 remaining unpaid shall be paid in full prior to issuance of the first certificate of occupancy at
4 the end of the deferral period. The Development Fee Deferral Surcharge shall be paid when
5 the deferred fees are paid, and shall accrue at the Development Fee Deferral Surcharge Rate.

6 The Development Fee Deferral Surcharge Rate shall be calculated monthly by the *San*
7 *Francisco Treasurer's Office Unit* as a blended interest rate comprised of 50% of the Treasurer's
8 yield on a standard two-year investment and 50% of the latest updated Monthly Earned Income
9 Yield Rate for the City and County of San Francisco's Pooled Funds, as posted on the San Francisco
10 Treasurer's website and 50 % of the Annual Infrastructure Construction Cost Inflation Estimate
11 published by the Office of the City Administrator's Capital Planning Group and approved by
12 the City's Capital Planning Committee consistent with its obligations under Section 409(b) of
13 the San Francisco Planning Code. ~~The Treasurer's yield on a standard two year investment shall~~
14 ~~be 60% of the Two Year U.S. FNMA Sovereign Agency Note Yield to Maturity and 40% of the Current~~
15 ~~Two Year U.S. Treasury Note Yield to Maturity as quoted from the close of business on the last open~~
16 ~~market day of the month previous to the date when a project sponsor elects to defer the development~~
17 ~~fees owed on a development project.~~ The annual Infrastructure Construction Cost Inflation
18 Estimate shall be updated by the Office of the City Administrator's Capital Planning Group on
19 an annual basis, in consultation with the Capital Planning Committee, with the goal of
20 establishing a reasonable estimate of construction cost inflation for the next calendar year for
21 a mix of public infrastructure and facilities in San Francisco. The Capital Planning Group may
22 rely on past construction cost inflation data, market trends, and a variety of national, state and
23 local commercial and institutional construction cost inflation indices in developing their annual
24 estimates for San Francisco. Commencing on the effective date of this ordinance, The San
25 Francisco Treasurer's Office Unit shall publish the Development Fee Deferral Surcharge blended

1 *rate on its the Department of Building Inspection website at or near the beginning of each month*
2 *March 1, 2010.* The accrual of any deferred development fees begins on the first day that a
3 project sponsor elects to defer development fees, but never later than immediately after
4 issuance of the first construction document. The Development Fee Collection Unit shall
5 calculate the final Development Fee Deferral Surcharge *for individual projects* by multiplying
6 the total development fees otherwise due prior to issuance of the construction document by
7 the Development Fee Deferral Surcharge Rate by the actual day count of the entire
8 Development Fee Deferral Period, which shall be the number of days between the project
9 sponsor's election to defer to final payment of the deferred development fees. The
10 Development Fee Deferral Surcharge shall be apportioned among all development fee funds
11 according to the ratio of each development fee as a percentage of the total development fees
12 owed on the specific project.

13 107A.13.4 Development Fee Collection Unit. There shall be a Development Fee
14 Collection Unit established within the Department. The Unit's duties include: (1) receiving and
15 organizing information from various City agencies concerning the amount of development fees
16 owed or specific development impact requirements imposed under various sections of the
17 San Francisco Municipal Code or other legal authority, (2) working with the project sponsor
18 and relevant agencies to resolve any disputes or questions concerning the development fees
19 or development impact requirements applied to specific development projects, (3) ensuring
20 that the first construction document, or first certificate of occupancy if the project sponsor
21 elects to defer payment, is not issued prior to payment of all development fees that are due
22 and owing, (4) confirming with the Planning Department that any outstanding development
23 impact requirements are satisfied prior to issuance of the first certificate of occupancy for
24 projects subject to such requirements, (5) generating Project Development Fee Reports, (6)
25 processing any development fee refunds, (7) publishing and updating the Citywide

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1 Development Fee Register, (8) initiating lien proceedings to collect any unpaid development
2 impact or in-lieu fees, and (9) performing such other duties as the Building Official requires.
3 The fee for the Department's services shall be as provided in Section 107A.13.14.

4 107A.13.5 Citywide Development Fee Register. The Unit shall publish a Citywide
5 Development Fee Register that lists all current San Francisco development impact and in-lieu
6 fees. The Unit shall update the Register whenever a development impact or in-lieu fee is
7 newly enacted, rescinded or amended. The Unit shall make the Register available to the
8 public upon request, including but not limited to posting it on the Department's website.

9 107A.13.6 Required City Agency or Department Notice to Development Fee Collection
10 Unit. Prior to issuance of any building or site permit for a project, any department or agency
11 responsible for calculating a development fee collected by the Unit or imposing a development
12 impact requirement shall send written or electronic notification to the Development Fee
13 Collection Unit that (i) identifies the development project, (ii) lists which specific development
14 fees and/or development impact requirements are applicable and the legal authorization for
15 their application, (iii) specifies the amount of the development fee or fees that the department
16 or agency calculates is owed to the City or that the project sponsor has elected to satisfy a
17 development impact requirement through the direct provision of public benefits, and (iv) lists
18 the name and contact information for the staff person at each agency or department
19 responsible for calculating the development fee or monitoring the development impact
20 requirement.

21 107A.13.7 Project Development Fee Report. Prior to the issuance of the building or
22 site permit for a development project that owes a development fee or fees or is subject to
23 development impact requirements, and at any time thereafter, the Development Fee
24 Collection Unit shall prepare and provide to the project sponsor, or any member of the public
25 upon request, a Project Development Fee Report. The Report shall: (i) identify the

1 development project (ii) list which specific development fees and/or development impact
2 requirements are applicable and the legal authorization for their application, (iii) specify the
3 amount of the development fee or fees that the department or agency calculates is owed or
4 that the project sponsor has elected to satisfy a development impact requirement through the
5 direct provision of physical improvements, (iv) list the name and contact information for the
6 staff person at each agency or department responsible for calculating the development fee or
7 monitoring the development impact requirement, and (v) state whether the development fee or
8 fees are due and payable prior to issuance of the first construction document or whether the
9 project sponsor has requested deferral under Section 107A.13.3.1, and note the status of
10 payment. A copy of the Project Development Fee Report shall always be made available to
11 the project sponsor immediately prior to issuance of the site or building permit for a
12 development project subject to any development fee or fees to provide adequate notice of the
13 proposed development fee or fees. The Development Fee Collection Unit shall not issue a
14 Final Development Fee Report and the respective site or building permit for a development
15 project until it has received written confirmation from the First Source Hiring Administration
16 (FHSA) that the project sponsor has executed a first source hiring agreement(s) with the
17 FHSA consistent with Administrative Code Section 83.11.

18 107A.13.8 Failure to give notice of a development fee owed or development impact
19 requirement. The failure of the Unit or a fee-assessing department or agency to give any
20 notice of a development fee owed or development impact requirement shall not relieve the
21 project sponsor of the obligation to pay the development fee when it is due. The procedure set
22 forth in this Section is not intended to preclude enforcement of the development fee or
23 development impact requirements pursuant to any other section of this Code, the Planning
24 Code or other parts of the Municipal Code or under the laws of the State of California.

25 107A.13.9 Development fee dispute resolution; appeal to Board of Appeals.

1 107A.13.9.1 Procedure for resolution by Development Fee Collection Unit. If a dispute
2 or question arises concerning the accuracy of the final Project Development Fee Report,
3 including the mathematical calculation of any development fee listed thereon, the
4 Development Fee Collection Unit shall attempt to resolve it in consultation with the
5 department or agency affected by the disputed fee and the project sponsor. A person
6 protesting the accuracy of the Report must submit the issue or issues in writing to the Unit
7 with a copy to the department or agency whose development fee is in dispute. Any public
8 notice of the issuance of the building or site permit shall notify the public of the right to request
9 a copy of the Project Development Fee Report and of the right of appeal to the Board of
10 Appeals under Section 107A.13.9.2.

11 107A.13.9.2 Appeal to Board of Appeals. (a) If the Development Fee Collection Unit is
12 unable to resolve the dispute or question , the project sponsor or a member of the public may
13 appeal the Project Development Fee Report to the Board of Appeals within 15 days of the
14 issuance of the building or site permit under Article 8 et seq. of the San Francisco Business &
15 Tax Regulations Code.

16 (b) In cases where a project sponsor is not using the site permit process and is
17 required to pay a development fee or fees prior to issuance of the development project's
18 building permit, and chooses not to defer payment under Section 107A.13.3.1, the sponsor
19 may pay a disputed fee under protest and file an appeal within 15 days of the issuance of the
20 permit.

21 (c) In order to appeal to the Board of Appeals under this Section, a project sponsor
22 appellant must first have attempted to resolve the dispute or question by following the
23 procedure in Section 107A.13.9.1. Evidence of this prior attempt must be submitted to the
24 Board of Appeals in order for the Board to accept the appeal. Members of the public may file
25 an appeal under this Section without providing such evidence.

1 (d) Promptly after an appeal has been filed, the Board of Appeals shall notify the
2 department or agency whose development fee or development impact requirement is at issue
3 of the fact that an appeal has been filed and the date scheduled for hearing. A representative
4 of the Department of Building Inspection and of the department or agency whose
5 development fee or development impact requirement is in dispute must be present at the
6 appeal hearing.

7 (e) In hearing any appeal of the Project Development Fee Report, the Board's
8 jurisdiction is strictly limited to determining whether the mathematical calculation of the
9 development fee or the scope of a development impact requirement is accurate and resolving
10 any technical disputes over the use, occupancy, floor area, unit count and mix, or other
11 objective criteria that calculation of the challenged development fee or development impact
12 requirement is based upon.

13 (f) If a decision by the Board of Appeals requires a refund of all or any portion of
14 the disputed development fee, the refund shall be processed promptly by the Development
15 Fee Collection Unit under Section 107A.13.11. If a decision requires a new determination
16 regarding the scope of a development impact requirement, such new determination shall be
17 made by the relevant City agency or department prior to issuance of the first certificate of
18 occupancy. Where the Board determines that an additional amount of the fee or fees is due
19 and owing, the additional amount shall be paid prior to issuance of the first certificate of
20 occupancy for the development project.

21 107A.13.10 Violation of this Section deemed a violation of the Building Code. In
22 addition to the lien proceedings authorized by Section 107A.13.14, a violation of this Section
23 107A.13 shall be deemed a violation of the Building Code and subject to the provisions of
24 Section 103A and any investigation or other fees authorized under other sections of this Code
25 to compensate the Department for the cost of abating violations.

1 107A.13.11 Development fee refunds. Upon notification by the property owner or
2 project sponsor and confirmation by the applicable department or agency that a fee refund is
3 due, the Unit shall process the refund. The fee for processing the refund shall be as set forth
4 in Table 1A-D – Other Building Permit and Plan Review Fees.

5 107A.13.12 Development fee information a public record. Any notice of development
6 fees due or development impact requirements imposed sent to the Development Collection
7 Unit by any fee-assessing departments and agencies, the Project Development Fee Report
8 issued by the Unit, and any development fee refunds or development impact requirement
9 revisions made are a matter of public record.

10 107A.13.13 Administrative fee. The fee for services provided by the Department
11 under this Section 107A.13 shall be the Standard Hourly Rate for Administration set forth in
12 Table 1A-D of this Code . The administrative fee is payable within 30 days' of the
13 Department's notice that payment is due.

14 107A.13.14 Administrative procedures. The Building Official is empowered to adopt
15 such administrative procedures as he or she deems necessary to implement this Section.
16 Such administrative procedures shall be generally consistent with the procedural
17 requirements set forth in this Section 107A.

18 107A.13.15 Wrongful Issuance of First Construction Document or Certificate of
19 Occupancy; assessment lien; notice. In addition to any other remedy established in this Code
20 or under other authority under the laws of the State of California, if DBI inadvertently or
21 mistakenly issues the first construction document or first certificate of occupancy, whichever
22 applies, for a development project that has not paid a development fee that is due and owing
23 and payment has not been received within 30 days following notice that payment is due, or, in
24 the case where a sponsor has elected to satisfy a development impact requirement through
25 direct provision of physical improvements and where non-compliance with any such

1 requirement is not corrected within 30 days following notice, the Department shall initiate
2 proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative
3 Code to make the entire unpaid balance of the fee that is due, including interest at the rate of
4 one and one-half percent per month or fraction thereof on the amount of unpaid fee, a lien
5 against all parcels used for the development project. The penalty fee provisions of this
6 section shall also apply to projects that have elected to provide physical improvements in lieu
7 of paying a development fee, as if they had elected to pay the relevant development fee.

8 The Department shall send all notices required by Article XX to the owner or owners of
9 the property and to the project sponsor if different from the owner. The Department shall also
10 prepare a preliminary report, and notify the owner and sponsor of a hearing by the Board of
11 Supervisors to confirm such report at least ten days before the date of the hearing. The report
12 shall contain the owner and sponsor's names, a description of the development project, a
13 description of the parcels of real property to be encumbered as set forth in the Assessor's
14 Map Books for the current year, a description of the alleged violation of this Section, and shall
15 fix a time, date, and place for hearing. The Department shall mail this report to the sponsor
16 and each owner of record of the parcels of real property subject to the lien.

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

1 Except for the release of the lien recording fee authorized by Administrative Code
2 Section 10.237, all sums collected by the Tax Collector under this Section shall be held in
3 trust by the Treasurer and deposited in the City's appropriate fee account.
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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By:


8 JUDITH A. BOYAJIAN
9 Deputy City Attorney
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City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 101075

Date Passed: December 07, 2010

Ordinance amending the San Francisco Building Code by amending Section 107A.13 to modify the method of calculating the development fee deferral surcharge rate and to clarify when a project sponsor may elect to defer the payment of development impact and in-lieu fees, adopting environmental finding.

November 15, 2010 Land Use and Economic Development Committee - RECOMMENDED

November 23, 2010 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Elsbernd, Mar, Maxwell and Mirkarimi

December 07, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Duffy, Elsbernd, Mar, Maxwell and Mirkarimi

File No. 101075

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/7/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor Gavin Newsom

December 16, 2010

Date Approved