

1 [Planning Code Amendments – Development Impact and In-Lieu Fees]

2

3 **Ordinance amending the San Francisco Planning Code by (1) amending Section 409 to**
 4 **clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees**
 5 **authorized by the section do not need further action by the Board of Supervisors, to**
 6 **provide that the Planning Director be included in the annual fee reporting process, and**
 7 **to make other technical amendments to simplify the annual fee reporting process and**
 8 **ensure that the Controller's Office and the Capital Planning Program coordinate their**
 9 **efforts, (2) amending Sections 413.6 and 415.5 to provide that the annual adjustments**
 10 **to the Jobs-Housing Linkage and Affordable Housing fees shall be made at the same**
 11 **time as the cost inflation adjustments are made to the other development fees, (3)**
 12 **amending other sections of Article 4 to clarify language, eliminate confusion as to**
 13 **when requirements must be met, and correct errors in cross-referencing, and (4)**
 14 **adding an uncodified section providing that (a) if a development fee was evaluated in**
 15 **2010 or 2011, it need not be included in the 2011 five-year evaluation and (b)**
 16 **authorizing the Controller to make the 2011 Infrastructure Cost Inflation Adjustments to**
 17 **the development fees 30 days from the effective date of this ordinance rather than in**
 18 **January;** amending the San Francisco Administrative Code by repealing Section 38.14
 19 **(the Severability Clause) and moving it to Section 430~~;~~, and adopting environmental,**
 20 **Planning Code Section 302, and Planning Code Section 101.1 findings.**

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

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

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

2 (1) The Planning Department has determined that the actions contemplated in this
3 ordinance comply with the California Environmental Quality Act (California Public Resources
4 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
5 Supervisors in File No. 101523 and is incorporated herein by reference.

6 (2) Pursuant to Section 302 of the Planning Code, the Board finds that this
7 ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in
8 Planning Commission Resolution No. 18240 and the Board incorporates such reasons herein
9 by reference. A copy of Planning Commission Resolution No. 18240 is on file with the Clerk of
10 the Board of Supervisors in File No. 101523.

11 (3) This ordinance is in conformity with the General Plan and the Priority Policies of
12 Planning Code Section 101.1 for the reasons set forth n Planning Commission Resolution No.
13 18240 and the Board incorporates such reasons herein by reference.

14 Section 2. The San Francisco Planning Code is hereby amended by amending
15 Sections 402, 403, 409, 411.3, 411.4, 412.4, 413.4, 413.6, 414.4, 414.10, 414.15, 415.5,
16 416.3, 417.4, 418.4, 419.2, 419.3, 419.4, 419.5, 420, 420.4, 420.5, 421.4, 422.4, 423.4,
17 424.3, and adding Section 430, to read as follows:

18 **SEC. 402. PROCEDURE FOR PAYMENT AND COLLECTION OF DEVELOPMENT FEES.**

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

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

24 (1) **Required Notice.** When the Planning Department determines that a
25 development project is subject to one or more development fees or development impact

1 requirements, but in any case no later than prior to issuance of the building or site permit for a
2 development project, the Department shall send written or electronic notification to the
3 Development Fee Collection Unit at DBI, and also to MOH, MTA or other applicable agency
4 that administers an applicable development fee or development impact requirement, that: (i)
5 identifies the development project, (ii) lists which specific development fees and/or
6 development impact requirements are applicable and the legal authorization for their
7 application, (iii) specifies the dollar amount of the development fee or fees that the
8 Department calculates is owed to the City or that the project sponsor has elected to satisfy a
9 development impact requirement through the provision of physical or "in-kind" improvements,
10 and (iv) lists the name and contact information for the staff person at each agency or
11 department responsible for calculating the development fee or monitoring compliance with the
12 development impact requirement for physical or in-kind improvements.

13 (2) **Amended Notices.** The Department shall send an amended notice to the
14 Development Fee Collection Unit, and also to any department or agency that received the
15 initial notice, if at any time subsequent to its initial notice: (i) any of the information required by
16 subsection (1) above is changed or modified, or (ii) the development project is modified by the
17 Department or Commission during its review of the project and the modifications change the
18 dollar amount of the development fee or the scope of any development impact requirement.

19 (3) **Optional Recordation of Notice of Special Restrictions Prior to Issuance of**
20 **Building or Site Permit.** Prior to issuance of a building or site permit for a development
21 project subject to a development fee or development impact requirement, the Department
22 may request the Project Sponsor ~~Development Fee Collection Unit~~ to record a notice with the
23 County Recorder that a development project is subject to a development fee or development
24 impact requirement. The County Recorder shall serve or mail a copy of such notice to the
25 persons liable for payment of the fee or satisfaction of the requirement and the owners of the

1 real property described in the notice. The notice shall include (i) a description of the real
2 property subject to the development fee or development impact requirement, (ii) a statement
3 that the development project is subject to the imposition of the development fee or
4 development impact requirement, and (iii) a statement that the dollar amount of the fee or the
5 specific development impact requirement to which the project is subject has been determined
6 under Article 4 of this Code and citing the applicable section number.

7 (c) **Process for Revisions of Determination of Development Impact Fee(s) or**
8 **Development Impact Requirement(s).** In the event that the Department or the Commission
9 takes action affecting any development project subject to this Article and such action is
10 subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board
11 of Supervisors, or by court action, the building permit or building permit application for such
12 development project shall be remanded to the Department to determine whether the
13 development project has been changed in a manner which affects the calculation of the
14 amount of development fees or development impact requirements required under this Article
15 and, if so, the Department shall revise the requirement imposed on the permit application in
16 compliance with this Article within 30 days of such remand and notify the project sponsor in
17 writing of such revision or that a revision is not required. The Department shall notify the
18 Development Fee Collection Unit at DBI if the revision materially affects the development fee
19 requirements originally imposed under this Article so that the Development Fee Collection
20 Unit update the Project Development Fee Report and re-issue the associated building or site
21 permit for the project, if necessary, to ensure that any revised development fees or
22 development impact requirements are enforced.

23
24 **SEC. 403. PAYMENT OF DEVELOPMENT FEE(S) OR SATISFACTION OF**
25 **DEVELOPMENT IMPACT REQUIREMENT(S) AS A CONDITION OF APPROVAL ~~FOR~~**

1 ~~ISSUANCE OF BUILDING OR SITE PERMIT~~; **PLANNING COMMISSION REVIEW;**
2 **RECOMMENDATION CONCERNING EFFECTIVENESS OF FEE DEFERRAL PROGRAM.**

3 (a) **Condition of Approval.** In addition to any other condition of approval that may
4 otherwise be applicable, the Department or Commission shall require as a condition of
5 approval of ~~any building or site permit for~~ a development project subject to a development fee
6 or development impact requirement under this Article that such development fee or fees be
7 paid prior to the issuance of the first construction document for any building or buildings within
8 the development project, in proportion to the amount required for each building if there are
9 multiple buildings, with an option for the project sponsor to defer payment of 85 percent of the
10 fees, or 80 percent of the fees if the project is subject to a neighborhood infrastructure impact
11 development fee, to prior to issuance of the first certificate of occupancy upon agreeing to pay
12 a Development Fee Deferral Surcharge on the amount owed, as provided by Section
13 107A.13.3 of the San Francisco Building Code ("Fee Deferral Program"). The Department or
14 Commission shall also require as a condition of approval that any development impact
15 requirement imposed on a development project under this Article shall be satisfied prior to
16 issuance of the first certificate of occupancy for any building or buildings within the
17 development project, in proportion to the amount required for each building if there are
18 multiple buildings.

19 (b) **Hearing to Review Effectiveness of Fee Deferral Program.** Under 107A.13.3
20 of the San Francisco Building Code, the option to defer the payment of development fees
21 expires on July 1, 2013 unless the Board of Supervisors extends the Fee Deferral Program.
22 Prior to the July 1, 2013 expiration date, the Planning Commission shall hold a public hearing
23 to review the effectiveness of the Fee Deferral Program, the economy at large, and whether
24 the stimulative effects of the Fee Deferral Program are still necessary. Following the public
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1 hearing, the Commission shall forward a recommendation to the Board of Supervisors as to
2 whether the Fee Deferral Program should be continued, modified, or terminated.

3
4 **SEC. 409. ANNUAL CITYWIDE DEVELOPMENT FEE REPORTING REQUIREMENTS AND**
5 **COST INFLATION FEE ADJUSTMENTS.**

6 (a) **Annual Citywide Development Fee and Development Impact Requirements**
7 **Report.** In coordination with the Development Fee Collection Unit at DBI *and the Planning*
8 *Director*, the Controller shall issue a report within 180 days after the end of each fiscal year,
9 that provides information on all development fees established in the San Francisco Planning
10 Code collected during the prior fiscal year organized by development fee account and all
11 cumulative monies collected over the life of each development fee account, as well as all
12 monies expended. The report shall also provide information on the number of projects that
13 elected to satisfy development impact requirements through the provision of "in-kind" physical
14 improvements, including on-site and off-site BMR units, instead of paying development fees.
15 The report shall also include any annual reporting information otherwise required pursuant to
16 the California Mitigation Fee Act, Government Code 66001 et seq. The report shall be
17 presented *by the Planning Director* to the Planning Commission and to the Land Use &
18 Economic Development Committee of the Board of Supervisors. The Report shall also contain
19 *recommendations for information on the Controller's* annual construction cost inflation
20 adjustments to development fees; described in subsection (b) below, as well as information on
21 MOH's separate adjustment of the Jobs-Housing Linkage and Inclusionary Affordable
22 Housing fees described in Sections 413.6(b) and 415.5(b)(3).

23 (b) **Annual Development Fee Infrastructure Construction Cost Inflation**
24 **Adjustments.** ~~In conjunction with~~ *Prior to issuance of* the Annual Citywide Development Fee
25 and Development Impact Requirements Report referenced in subsection (a) above, the

1 Controller shall review the amount of each development fee established in the San Francisco
2 Planning Code ~~this Article~~ and, with the exception of the Jobs-Housing Linkage Fee in Section
3 413 et seq. and the Inclusionary Affordable Housing Fee in Section 415 et seq., shall adjust
4 the dollar amount of any development fee on an annual basis every January 1 based solely on
5 the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the
6 City Administrator's Capital Planning Group and approved by the City's Capital Planning
7 Committee no later than November December 1 every year, without further action by the Board of
8 Supervisors. The Annual Infrastructure Construction Cost Inflation Estimate shall be updated
9 by the Capital Planning Group on an annual basis and no later November December 1 every
10 year, in consultation with the Capital Planning Committee, ~~with the goal of~~ in order to
11 establishing a reasonable estimate of construction cost inflation for the next ~~fiscal~~ calendar
12 year for a mix of public infrastructure and facilities in San Francisco. The Capital Planning
13 Group may rely on past construction cost inflation data, market trends and a variety of
14 national, state and local commercial and institutional construction cost inflation indices in
15 developing their annual estimates for San Francisco. The Planning Department and the
16 Development Fee Collection Unit at DBI shall provide notice of ~~any~~ the Controller's proposed
17 development fee adjustments, including the Annual Infrastructure Construction Cost Inflation
18 Estimate formula used to calculate the adjustment, and MOH's separate adjustment of the
19 Jobs-Housing Linkage and Inclusionary Affordable Housing fees on ~~its~~ the Planning Department
20 and DBI website and to any interested party who has requested such notice at least 30 days
21 prior to the adjustment taking effect each January 1. The Jobs-Housing Linkage Fee and the
22 Inclusionary Affordable Housing fees shall be adjusted under the procedures established in
23 Sections 413.6(b) and 415.5(b)(3).

24

25 **SEC. 411.3. APPLICATION OF TIDF.**

1 (a) **Application.** Except as provided in Subsections (1) and (2) below, the TIDF
2 shall be payable with respect to any new development in the City for which a building or site
3 permit is issued on or after September 4, 2004. In reviewing whether a development project is
4 subject to the TIDF, the project shall be considered in its entirety. A sponsor shall not seek
5 multiple applications for building permits to evade paying the TIDF for a single development
6 project.

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

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

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

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

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

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

5 (E) New development for which a project sponsor filed an application for
6 environmental evaluation or a categorical exemption prior to April 1, 2004, and for which the
7 City issued a building permit or site permit on or before September 4, 2008; provided
8 however, that such new development may be subject to the TIDF imposed by Ordinance No.
9 224-81, as amended through June 30, 2004, except that the Department and the
10 Development Fee Collection Unit at DBI shall be responsible for the administration,
11 imposition, review and collection of any such fee consistent with the administrative procedures
12 set forth in Section 411.1 et seq. The Department shall make the text of Ordinance No. 224-
13 81, as amended through June 30, 2004, available on the Department's website and shall
14 provide copies of that ordinance upon request.

15 (F) The following types of new developments:

16 (i) Public facilities/utilities, as defined in Section 209.6 of this Code;

17 (ii) Open recreation/horticulture, as defined in Section 209.5 of this Code, including
18 private noncommercial recreation open use, as referred to in Section 221(g) of this Code;

19 (iii) Vehicle storage and access, as defined in Section 209.7 of this Code;

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

22 (v) Wholesale storage of materials and equipment, as defined in Section 225 of this
23 Code;

24 (vi) Other Uses, as defined in Section 227(a)—(q) and (s)—(t) of this Code;

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

8 (c) **Calculation of TIDF.** The TIDF shall be calculated on the basis of the number of
9 square feet of new development, multiplied by the square foot rate in effect at the time of
10 building or site permit issuance for each of the applicable economic activity categories within
11 the new development, as provided in Subsection 411.3(e) below. An accessory use shall be
12 charged at the same rate as the underlying use to which it is accessory. Whenever any new
13 development or series of new developments cumulatively creates more than 3,000 gross
14 square feet of covered use within a structure, the TIDF shall be imposed on every square foot
15 of such covered use (including any portion that was part of prior new development below the
16 3,000 square foot threshold).

17 (d) **Credits.** In determining the number of gross square feet of use to which the
18 TIDF applies, the Department shall provide a credit for prior uses eliminated on the site. The
19 credit shall be calculated according to the following formula:

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

24 (A) The adjustment factor shall be a fraction, the numerator of which shall be the fee
25 rate which the Department shall determine, in consultation with the MTA, if necessary, applies

1 to the economic activity category in the most recent calculation of the TIDF Schedule
2 approved by the MTA Board for the prior use being eliminated by the project.

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

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

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

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

12 (e) **TIDF Schedule.**

13 ~~(f)~~ 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

22 ~~(2) — Biennial Adjustment. Biennially, beginning July 1, 2005, the TIDF Schedule shall be~~
23 ~~adjusted, without further action by the Board of Supervisors, to reflect the average annual change in~~
24 ~~the San Francisco Bay Area Consumer Price Index (CPI) for "All Urban Consumers" for the prior two~~
25

1 ~~years, as reported by the Association of Bay Area Governments, and as determined by the Director of~~
2 ~~MTA.~~

3
4 **SEC. 411.4. IMPOSITION OF TIDF.**

5 (a) **Determination of Requirements.** The Department shall determine the
6 applicability of Section 411.1 et seq. to any development project requiring a first construction
7 document ~~building or site permit~~ and, if Section 411.1 is applicable, shall impose any TIDF owed
8 as a condition of approval for issuance of the first construction document ~~building or site permit~~
9 for the development project. The project sponsor shall supply any information necessary to
10 assist the Department in this determination. The Zoning Administrator may seek the advice
11 and consent of the MTA regarding any interpretations that may affect implementation of this
12 section.

13 (b) **Department Notice to Development Fee Collection Unit at DBI and MTA of**
14 **Requirements.** After the Department has made its final determination regarding the
15 application of the TIDF to a development project under Section 411.1 et seq., it shall
16 immediately notify the Development Fee Collection Unit at DBI and the Director of MTA of any
17 TIDF owed in addition to the other information required by Section 402(b) of this Article. If the
18 MTA Director disputes the Department's calculation, he or she shall promptly inform the
19 Development Fee Collection Unit and the MTA Director's determination shall prevail.

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

1 **SEC. 412.4. IMPOSITION OF DOWNTOWN PARK FEE REQUIREMENT.**

2 (a) **Determination of Requirements.** The Department shall determine the
3 applicability of Section 412.1 et seq. to any development project requiring a first construction
4 document ~~building or site permit~~ and, if Section 412.1 et seq. is applicable, the number of gross
5 square feet of office use subject to its requirements, and shall impose this requirement as a
6 condition of approval for issuance of the ~~first construction document~~ ~~building or site permit~~ for the
7 development project to address the need for additional public park and recreation facilities in
8 the downtown districts. The project sponsor shall supply any information necessary to assist
9 the Department in this determination.

10 (b) **Amount of Fee.** The amount of the fee shall be \$2 per square foot of the net
11 addition of gross floor area of office use to be constructed as set forth in the final approved
12 building or site permit.

13 (c) **Department Notice to Development Fee Collection Unit at DBI.** After the
14 Department has made its final determination of the net addition of gross floor area of office
15 use subject to Section 412.1 et seq. and the dollar amount of the Downtown Park Fee
16 required, the Department shall immediately notify the Development Fee Collection Unit at DBI
17 of its determination, in addition to the other information required by Section 402(b) of this
18 Article.

19 (d) **Process for Revisions of Determination of Requirement.** In the event that
20 the Department or the Commission takes action affecting any development project subject to
21 Section 412.1 et seq. and such action is subsequently modified, superseded, vacated, or
22 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
23 procedures of Section 402(c) of this Article shall be followed.

24
25 **SEC. 413.4. IMPOSITION OF HOUSING REQUIREMENT.**

1 (a) **Determination of Requirements.** The Department shall determine the
2 applicability of Section 413.1 et seq. to any development project requiring a first construction
3 document ~~building or site permit~~, and if Section 413.1 et seq. is applicable, the number of gross
4 square feet of each type of space subject to its requirements, and shall impose these
5 requirements as a condition of approval for issuance of the first construction document ~~building~~
6 for the development project to mitigate the impact on the availability of housing which will be
7 caused by the employment facilitated by the development project. The project sponsor shall
8 supply any information necessary to assist the Department in this determination.

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

14 (c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or
15 site permit for a development project subject to the requirements of Section 413.1 et seq., the
16 sponsor shall elect one of the three options listed below to fulfill any requirements imposed as
17 a condition of approval and 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,
19 according to the formulas set forth in Section 413.6, to one or more housing developers who
20 will use the funds or 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
22 the formula set forth in Section 413.6; or

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

24 (d) **Department's Notice to Development Fee Collection Unit of Sponsor's**
25 **Choice.** After the project sponsor has notified the Department of the choice to fulfill the

1 requirements of Section 413.1 et seq., the Department shall immediately notify the
2 Development Fee Collection Unit at DBI of the project sponsor's choice.

3 (e) **Development Fee Collection Unit Notice to Department Prior to Issuance of**
4 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
5 provide notice in writing or electronically to the Department prior to issuing the first certificate
6 of occupancy for any development project subject to Section 413.1 et seq. that has elected to
7 fulfill all or part of the requirements with an option other than payment of an in-lieu fee. If the
8 Department notifies the Unit at such time that the sponsor has not satisfied the requirements,
9 the Director of DBI shall deny any and all certificates of occupancy until the subject project is
10 brought into compliance with the requirements of Section 413.1 et seq.

11 (e) (f) **Process for Revisions of Determination of Requirements.** In the event that
12 the Department or the Commission takes action affecting any development project subject to
13 Section 413.1 et seq. and such action is subsequently modified, superseded, vacated, or
14 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
15 procedures of Section 402(c) shall be followed.

16
17 **SEC. 413.6. COMPLIANCE BY PAYMENT OF IN-LIEU FEE.**

18 (a) The amount of the fee which may be paid by the sponsor of a development
19 project subject to this Section in lieu of developing and providing the housing required by
20 Section 413.5 shall be determined by the following formulas for each type of space proposed
21 as part of the development project and subject to this Article ordinance.

22 (1) For applicable projects (as defined in Section 413.3), any net addition shall pay
23 per the Fee Schedule in Table 413.6A, and

24 (2) For applicable projects (as defined in Section 413.3), any replacement or
25 change of use shall pay per the Fee Schedule in Table 413.6B.

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TABLE 413.6

FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET

Use	Fee per Gross Square Foot
Entertainment	\$18.62
Hotel	\$14.95
Integrated PDR	\$15.69
Institutional	\$0.00
Office	\$19.96
PDR	\$0.00
Research & Development	\$13.30
Residential	\$0.00
Retail	\$18.62
Small Enterprise Workspace	\$15.69

TABLE 413.6

FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE

Previous Use	New Use	Fee per Gross Square Foot
Entertainment, Hotel, Integrated PDR, Office, Research & Development, Retail, or Small Enterprise Workspace	Entertainment, Hotel, Integrated PDR, Office, Retail, or Small Enterprise Workspace	\$0.00

1 2 3 4	PDR which received its First Certificate of Occupancy on or before April 1, 2010	Entertainment, Hotel, Integrated PDR, Office, Research & Development, Retail, or Small Enterprise Workspace	Use Fee from Table 413.6A minus \$14.09
5 6 7 8	Institutional which received its First Certificate of Occupancy on or before April 1, 2010	Entertainment, Hotel, Integrated PDR, Office, Research & Development, Retail, or Small Enterprise Workspace	\$0.00
9 10 11 12	Institutional or PDR which received its First Certificate of Occupancy on or before April 1, 2010	Institutional, PDR, Research & Development, Residential	\$0.00
13 14 15 16	Institutional or PDR which received its First Certificate of Occupancy after April 1, 2010	Any	Use Fee from Table 413.6
17 18 19 20	Residential	Entertainment, Hotel, Integrated PDR, Office, PDR, Research & Development, Retail, or Small Enterprise Workspace	Use Fee from Table 413.6

21 (b) Commencing on January 1, 2012, No no later than July January 1 of each year,
22 MOH shall adjust the in-lieu fee payment option. No later than November 1 of each year,
23 MOH shall provide the Planning Department, DBI, and the Controller with information on the
24 adjustment to the in-lieu fee payment option so that it can be included in the Planning
25 Department's and DBI's website notice of the fee adjustments and the Controller's Annual

1 Citywide Development Fee and Development Impact Requirements Report described in
2 Section 409(b) and provide a report on its adjustment to the Board of Supervisors. MOH shall
3 provide notice of any fee adjustment on its website at least 30 days prior to the adjustment
4 taking effect. MOH is authorized to develop an appropriate methodology for indexing the fee,
5 based on adjustments in the costs of constructing housing and in the price of housing in San
6 Francisco consistent with the indexing for the Residential Inclusionary Affordable Housing
7 Program in lieu fee set out in Section 415.6. The method of indexing shall be published in the
8 Procedures Manual for the Residential Inclusionary Affordable Housing Program. In making a
9 determination as to the amount of the fee to be paid, the Department shall credit to the
10 sponsor any excess Interim Guideline credits or excess credits which the sponsor elects to
11 apply against its housing requirement.

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

18
19 **SEC. 413.8. COMPLIANCE BY COMBINATION OF PAYMENT TO HOUSING**
20 **DEVELOPER AND PAYMENT OF IN-LIEU FEE.**

21 With the written approval of the Director of MOH, the sponsor of a development project
22 subject to Section 413.1 et seq. may elect to satisfy its housing requirement by a combination
23 of paying money or contributing land to one or more housing developers under Section 413.5
24 and paying a partial amount of the in-lieu fee to the Development Fee Collection Unit at DBI
25 under Section 413.6. In the case of such election, the sponsor must pay a sum such that each

1 gross square foot of net addition of each type of space subject to Section 413.1 et seq. is
2 accounted for in either the payment of a sum or contribution of land to one or more housing
3 developers or the payment of a fee to the Development Fee Collection Unit. The housing units
4 constructed by a housing developer must conform to all requirements of Section 413.1 et
5 seq., including, but not limited to, the proportion that must be affordable to qualifying
6 households as set forth in Section 413.5. All of the requirements of Sections 413.5 and 413.6
7 shall apply, including the requirements with respect to the timing of issuance of site and
8 building permits, first construction documents, and certificates of occupancy for the development
9 project and payment of the in-lieu fee.

10
11 **SEC. 414.4. IMPOSITION OF CHILD CARE REQUIREMENT.**

12 (a) **Determination of Requirements.** The Department shall determine the
13 applicability of Section 414.1 et seq. to any development project requiring a first construction
14 document ~~building or site permit~~ and, if Section 414.1 is applicable, the number of gross square
15 feet of each type of space subject to its requirements, and shall impose these requirements as
16 a condition of approval for issuance of the first construction document ~~building or site permit~~ for
17 the development project to mitigate the impact on the availability of child-care facilities which
18 will be caused by the employees attracted to the proposed development project. The project
19 sponsor shall supply any information necessary to assist the Department in this determination.

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

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

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

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

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

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

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

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

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

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

9 (f) **Process for Revisions of Determination of Requirements.** In the event that
10 the Department or Commission takes action affecting any development project subject to
11 Section 414.1 et seq. and such action is subsequently modified, superseded, vacated, or
12 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
13 procedures of Section 402(c) of this Article shall be followed.

14
15 **SEC. 414.10. COMPLIANCE BY ENTERING INTO AN ARRANGEMENT WITH A NON-**
16 **PROFIT ORGANIZATION.**

17 The sponsor of a development project subject to this Section may elect to satisfy its
18 child-care requirement by entering into an arrangement pursuant to which a nonprofit
19 organization will provide a child-care facility at a site within the City. The sponsor shall, prior to
20 the issuance of the first certificate of occupancy by the Director of DBI for the development
21 project, provide proof to the Director of Planning that:

22 (a) A space for a child-care facility has been provided by the nonprofit organization,
23 either for its own use if the organization will provide child-care services, or to a nonprofit child-
24 care provider without charge for rent, utilities, property taxes, building services, repairs, or any
25 other charges of any nature, as evidenced by a lease or sublease and an operating

1 agreement between the nonprofit organization and the provider with minimum terms of three
2 years;

3 (b) The child-care facility is a licensed child-care facility;

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

6
$$\text{Net add. gross sq. ft. office or hotel space} \times .01 = \text{sq. ft. of child-care facility}$$

7 In the event that the net addition of gross square feet of office or hotel space is less
8 than 300,000 square feet, the child-care facility may have a minimum gross floor of 2,000
9 square feet or the area determined according to the above formula, whichever is greater;

10 (d) The nonprofit organization has executed and recorded a binding written
11 agreement, with a term of 20 years from the date of issuance of the first certificate of
12 occupancy for the development project, pursuant to which the nonprofit organization
13 guarantees that it will operate a child-care facility or it will lease or sublease a child-care
14 facility to one or more nonprofit child-care providers for as long as there is a demonstrated
15 need under Section 414.12, and that it will comply with all of the requirements imposed on the
16 nonprofit organization under Section 414.10 and imposed on a sponsor under Sections 414.4.

17 (e) To support the provision of a child-care facility in accordance with the foregoing
18 requirements, the sponsor has paid to the nonprofit organization a sum which equals or
19 exceeds the amount of the in-lieu fee which would have been applicable to the project under
20 Section ~~414.8~~ ~~414.4(b)(4)~~.

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

1 Upon compliance with the requirements of this Section, the nonprofit organization shall
2 enjoy all of the rights and be subject to all of the obligations of the sponsor, and the sponsor
3 shall have no further rights or obligations under Section 414.1 et seq.
4

5 **SEC. 414.14. CHILD CARE CAPITAL FUND.**

6 There is hereby established a separate fund set aside for a special purpose called the
7 Child Care Capital Fund ("Fund"). All monies contributed pursuant to the provisions of Section
8 414.1 et seq., and all other monies from the City's General Fund or from contributions from
9 third parties designated for the fund shall be deposited in the Fund. All monies in the fund
10 shall be used solely to increase and/or improve the supply of child care facilities affordable to
11 households of low and moderate income; except that monies from the fund shall be used by
12 the Director to fund in a timely manner any nexus study required to demonstrate the
13 relationship between commercial development projects and child care demand as described
14 in Section ~~414.1~~ 414.4. The Fund shall be administered by the Director, who shall adopt rules
15 and regulations governing the disposition of the Fund which are consistent with Section 414.1
16 et seq. Such rules and regulations shall be subject to approval by resolution of the Board of
17 Supervisors.
18

19 **SEC. 414.15. DECREASE IN CHILD CARE FORMULAE AFTER STUDY.**

20 If the Commission determines after review of an empirical study that the formulae set
21 forth in Sections ~~414.4~~ 414.5 through 414.9 impose a greater requirement for child care facilities
22 than is necessary to provide child care for the number of employees attracted to office and
23 hotel development projects subject to Section 414.1 et seq., the Commission shall, within
24 three years of making such determination, refund that portion of any fee paid or permit a
25 reduction of the space dedicated for child care by a sponsor consistent with the conclusions of

1 such study. The Commission shall adjust any sponsor's requirement and the formulae set
2 forth in Sections ~~414.4~~ 414.5 through 414.9 so that the amount of the exaction is set at the level
3 necessary to provide child care for the employees attracted to office and hotel development
4 projects subject to Section 414.1 et seq.

5
6 **SEC. 415.5. COMPLIANCE THROUGH PROVISION OF ON-SITE AFFORDABLE**
7 **HOUSING. AFFORDABLE HOUSING FEE**

8 Except as provided in Section 415.5(g), all development projects subject to this
9 Program shall be required to pay an Affordable Housing Fee subject to the following
10 requirements:

11 (a) **Payment of a Fee.** Payment of a fee ~~to the~~ to the Development Collection Unit
12 at DBI for deposit into the Citywide Affordable Housing Fund for the purposes of that Fund.

13 (b) **Amount of Fee.** The amount of the fee which may be paid by the project
14 sponsor subject to this Program shall be determined by MOH utilizing the following factors:

15 (1) The number of units equivalent to the applicable percentage of the number of
16 units in the principal project. The applicable percentage shall be 20 percent or the percentage
17 that applied to the project if the project is subject to the requirements of an earlier version of
18 this Program due to the date it submitted its application. For the purposes of this Section, the
19 City shall calculate the fee using the direct fractional result of the total number of units
20 multiplied by the applicable percentage, rather than rounding up the resulting figure as
21 required by Section 415.6 5(a).

22 (2) The affordability gap using data on the cost of construction of residential housing
23 from the "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program"
24 prepared by Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent or
25 Maximum Purchase Price for the equivalent unit sizes. The Department and MOH shall

1 update the technical report from time to time as they deem appropriate in order to ensure that
2 the affordability gap remains current.

3 (3) Commencing on January 1, 2012, No no later than July January 1 of each year,
4 MOH shall adjust the fee. No later than November 1 of each year, MOH shall provide the
5 Planning Department, DBI, and the Controller with information on the adjustment to the fee so
6 that it can be included in the Planning Department's and DBI's website notice of the fee
7 adjustments and the Controller's Annual Citywide Development Fee and Development Impact
8 Requirements Report described in Section 409(b) and provide a report on its adjustment to
9 the Board of Supervisors. MOH shall provide notice of any fee adjustment on its website at
10 least 30 days prior to the adjustment taking effect. MOH is authorized to develop an
11 appropriate methodology for indexing the fee, based on adjustments in the costs of
12 constructing housing and in the price of housing in San Francisco. The method of indexing
13 shall be published in the Procedures Manual.

14 (c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to
15 issuance of the first construction document for a development project subject to Section
16 415.5, MOH shall notify the Development Fee Collection Unit at DBI electronically or in writing
17 of its calculation of the amount of the fee owed.

18 (d) **Lien Proceedings.** If, for any reason, the Affordable Housing Fee imposed
19 pursuant to Section 415.5 remains unpaid following issuance of the first Certificate of
20 Occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to
21 make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien
22 against all parcels used for the development project in accordance with Section 408 of this
23 Article and Section 107A.13.15 of the San Francisco Building Code.

24 (e) If a housing project is located in an Area Plan with an additional or specific
25 affordable housing requirements such as those set forth in section 416 and 417 or elsewhere

1 in this code, the more specific provisions shall apply in lieu of or in addition to those provided
2 in this Program, as applicable.

3 (f) **Use of Fees.** All monies contributed pursuant to this Section shall be deposited
4 in the special fund maintained by the Controller called the Citywide Affordable Housing Fund.
5 MOH shall use the funds in the following manner:

6 (1) Except as provided in subsection (2) below, the receipts in the Fund are hereby
7 appropriated in accordance with law to be used to:

8 (a) increase the supply of housing affordable to qualifying households subject to the
9 conditions of this Section; and

10 (b) provide assistance to low and moderate income homebuyers; and

11 (c) pay the expenses of MOH in connection with monitoring and administering
12 compliance with the requirements of the Program. MOH is authorized to use funds in an
13 amount not to exceed \$200,000 every 5 years to conduct follow-up studies under Section
14 415.9(e) and to update the affordable housing fee amounts as described above in Section
15 415.5(b). All other monitoring and administrative expenses shall be appropriated through the
16 annual budget process or supplemental appropriation for MOH. The fund shall be
17 administered and expended by MOH, which shall have the authority to prescribe rules and
18 regulations governing the Fund which are consistent with this Section.

19 (2) **"Small Sites Funds":**

20 (A) **Designation of funds.** MOH shall designate and separately account for 10%
21 percent of all fees that it receives under Section 415.1 et seq., excluding fees that are
22 geographically targeted such as those in Sections 415.6(a)(1) and 827(b)(C), to support
23 acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOH shall continue to
24 divert 10 percent of all fees for this purpose until the Small Sites Funds reach a total of \$15
25 million at which point, MOH will stop designating funds for this purpose. At such time as

1 designated Small Sites Funds are expended and dip below \$15 million, MOH shall start
2 designating funds again for this purpose, such that at no time the Small Sites Funds shall
3 exceed \$15 million. When the total amount of fees paid to the City under Section 415.1 et seq.
4 totals less than \$10 million over the preceding 12 month period, MOH is authorized to
5 temporarily divert funds from the Small Sites Fund for other purposes. MOH must keep track
6 of the diverted funds, however, such that when the amount of fees paid to the City under
7 Section 415.1 et seq. meets or exceeds \$10 million over the preceding 12 month period, MOH
8 shall commit all of the previously diverted funds and 10 percent of any new funds, subject to
9 the cap above, to the Small Sites Fund.

10 (B) **Use of Small Sites Funds.** The funds shall be used exclusively to acquire or
11 rehabilitate "Small Sites" defined as properties consisting of less than 25 units. Units
12 supported by monies from the fund shall be designated as housing affordable to qualifying
13 households as defined in Section 415.1 for no less than 55 years. Properties supported by the
14 Small Sites Funds must be either (i) rental properties that will be maintained as rental
15 properties; (ii) vacant properties that were formerly rental properties as long as those
16 properties have been vacant for a minimum of two years prior to the effective date of this
17 legislation, (iii) properties that have been the subject of foreclosure or (iv) a Limited Equity
18 Housing Cooperative as defined in Subdivision Code Sections 1399.1 et seq. or a property
19 owned or leased by a non-profit entity modeled as a Community Land Trust.

20 (C) **Initial Funds.** If, within 18 months from the date of adoption of this ordinance,
21 MOH dedicates an initial one-time contribution of other eligible funds to be used initially as
22 Small Sites Funds, MOH may use the equivalent amount of Small Sites Funds received from
23 fees for other purposes permitted by the Citywide Affordable Housing Fund until the amount of
24 the initial one-time contribution is reached.

1 (D) **Annual Report.** At the end of each fiscal year, MOH shall issue a report to the
2 Board of Supervisors regarding the amount of Small Sites Funds received from fees under
3 this legislation, and a report of how those funds were used.

4 (E) **Intent.** In adopting this ordinance regarding Small Sites Funds, the Board of
5 Supervisors does not intend to preclude MOH from expending other eligible sources of
6 funding on Small Sites as described in this Section, or from allocating or expending more than
7 \$15 million of other eligible funds on Small Sites.

8 (g) **Alternatives to Payment of Affordable Housing Fee:**

9 (1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it
10 qualifies for and chooses to meet the requirements of the Program through an Alternative
11 provided in this Subsection. The project sponsor may choose one of the following
12 Alternatives:

13 (A) **Alternative #1: On-Site Units.** Project sponsors may elect to construct units
14 affordable to qualifying households on-site of the principal project pursuant to the
15 requirements of Section 415.6.

16 (B) **Alternative #2: Off-Site Units.** Project sponsors may elect to construct units
17 affordable to qualifying households at an alternative site within the City and County of San
18 Francisco pursuant to the requirements of Section 415.7.

19 (C) **Alternative #3: Combination.** Project sponsors may elect any combination of
20 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site
21 units as provided in Section 415.6 or construction of off-site units as provided in Section
22 415.7, provided that the project applicant constructs or pays the fee at the appropriate
23 percentage or fee level required for that option.

24 (2) **Qualifications:** If a project sponsor wishes to comply with the Program through
25 one of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must

1 demonstrate that they qualify for the Alternative to the satisfaction of the Department and
2 MOH. A project sponsor may qualify for an Alternative by the following methods:

3 (i) **Method #1 - Ownership Units.** All affordable units provided under this
4 Program shall be sold as ownership units and will remain ownership units for the life of the
5 project. Project sponsors must submit the 'Affidavit to Establish Eligibility for an Alternative to
6 Affordable Housing Fee' to the Planning Department prior to project approval by the
7 Department or the Commission; or

8 (ii) **Method #2- Government Financial Contribution.** Submit to the Department a
9 contract demonstrating that the project's on- or off-site units are not subject to the Costa
10 Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section
11 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct
12 financial contribution or any other form of assistance specified in California Government Code
13 Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such
14 contracts entered into with the City and County of San Francisco must be reviewed and
15 approved by the Mayor's Office Housing and the City Attorney's Office. All contracts that
16 involve 100% affordable housing projects in the residential portion may be executed by the
17 Mayor or the Director of the Mayor's Office of Housing. Any contract that involves less than
18 100% affordable housing in the residential portion, may be executed by either the Mayor, the
19 Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office
20 of Housing, the Planning Director; or

21 (iii) **Method #3 – Development Agreement.** A project sponsor may apply to enter
22 into a Development Agreement with the City and County of San Francisco under California
23 Government Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative
24 Code, permitting the project to be eligible for on-site units as an alternative to payment of the
25

1 Affordable Housing Fee to satisfy the requirements of the Program and obligating the project
2 sponsor to provide the affordable units on-site.

3 (3) The Planning Commission or the Department may not require a project sponsor
4 to select a specific Alternative. If a project sponsor elects to meet the Program requirements
5 through one of the Alternatives described in (1), they must choose it and demonstrate that
6 they qualify prior to any project approvals from the Planning Commission or Department. The
7 Alternative will be a condition of project approval and recorded against the property in an
8 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described
9 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit
10 to Establish Eligibility for an Alternative to Affordable Housing Fee' based on the fact that the
11 units will be sold as ownership units. A The project sponsor who has elected to construct
12 affordable ownership units on- or off-site may only elect to pay the Affordable Housing Fee up
13 to the issuance of the first construction document if the project sponsor submits a new
14 Affidavit establishing that the units will not be sold as ownership units. If a project sponsor
15 fails to choose an Alternative before project approval by the Planning Commission or Planning
16 Department or if a project becomes ineligible for an Alternative, the provisions of Section
17 415.5 shall apply.

18 (4) If at any time, the project sponsor eliminates the on-site or off-site affordable
19 ownership-only units, then the project sponsor must immediately inform the Department and
20 MOH and pay the applicable Affordable Housing Fee plus interest and any applicable
21 penalties provided for under this Code. If a project sponsor requests a modification to its
22 conditions of approval for the sole purpose of complying with this Section, the Planning
23 Commission shall be limited to considering issues related to Section 415 et seq. in
24 considering the request for modification.

1 **SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING REQUIREMENT.**

2 The requirements of Sections 415.1 through 415.9 shall apply in the Market and
 3 Octavia Plan Area in addition to the following additional affordable housing requirement:

4 (a) **Amount of Fee.** All development projects that have not received Department or
 5 Commission approval as of the effective date of May 30, 2008 and that are subject to the
 6 Residential Inclusionary Affordable Housing Program shall pay an additional affordable
 7 housing fee per the fee schedule in Table 416.3A.

8 **TABLE 416.3A**

9 **AFFORDABLE HOUSING FEE SCHEDULE IN THE MARKET AND OCTAVIA**

10 **PROGRAM AREA**

	Van Ness and Market Special Use District	NCT	RTO
Net addition of residential use or change of use to residential use	\$7.20/gross square foot	\$3.60/ gross square foot	\$0.00/ gross square foot
Replacement of, or change of use from, non- residential to residential use	\$3.80/ gross square foot	\$0.20/ gross square foot	\$0.00/ gross square foot
Replacement of, or change of use from, PDR to residential use	\$5.50/ gross square foot	\$1.90/ gross square foot	\$0.00/ gross square foot

24 (b) **Other Fee Provisions.** This additional affordable housing fee shall be subject to
 25 the inflation adjustment provisions of Section 409 and the waiver and reduction provisions of

1 Section ~~406~~ ~~421.4~~. This additional affordable housing fee may not be met through the in-kind
2 provision of community improvements or Community Facilities (Mello Roos) financing options
3 of Sections ~~426.3~~ 421.3(d) and (e) and (f).

4 (c) **Exemption for Affordable Housing.** A project applicant shall not pay a
5 supplemental affordable housing fee for any square foot of space designated as a below
6 market rate unit under Section 415.1 et seq., the Citywide Inclusionary Affordable Housing
7 Program, or any other residential unit that is designated as an affordable housing unit under a
8 Federal, State, or local restriction in a manner that maintains affordability for a term no less
9 than 50 years.

10 (d) **Timing of Payment.** The Market and Octavia Plan Area Affordable Housing Fee
11 shall be paid before the City issues a first construction document, with an option for the
12 project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon
13 agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San
14 Francisco Building Code.

16 **SEC. 417.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENT.**

17 **Determination of Requirements.** The Department shall determine the applicability of
18 Section 417.1 et seq. to any development project requiring a first construction document ~~building~~
19 ~~or site permit~~ and, if Section 417.1 et seq. is applicable, shall impose any such requirements
20 as a condition of approval for issuance of the first construction document for ~~building or site~~
21 ~~permit~~ the development project. The project sponsor shall supply any information necessary to
22 assist the Department in this determination.

23 (b) **Department Notice to Development Fee Collection Unit** at DBI of Fee
24 **Requirements.** After the Department has made its final determination regarding the application
25 of the affordable housing requirements to a development project pursuant to Section 417.1 et

1 seq., it shall immediately notify the Development Fee Collection Unit at DBI of the applicable
2 affordable housing fee amount in addition to the other information required by Section 402(b)
3 of this Article.

4 **(c) Process for Revisions of Determination of Requirements.** In the event that
5 the Department or the Commission takes action affecting any development project subject to
6 Section 417.1 et seq. and such action is subsequently modified, superseded, vacated, or
7 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
8 procedures of Section 402(c) shall be followed.

9
10 **SEC. 418.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE AND SOMA**
11 **STABILIZATION FEE.**

12 **(a) Determination of Requirements.** The Department or Commission shall
13 determine the applicability of Section 418.1 et seq. to any development project requiring a *first*
14 *construction document* ~~building or site permit~~ and, if Section 418.1 et seq. is applicable, the
15 amount of Community Infrastructure Impact and SOMA Stabilization Fees required and shall
16 impose these requirements as a condition of approval for issuance of the *first construction*
17 *document* ~~building or site permit~~ for the development project. The project sponsor shall supply
18 any information necessary to assist the Department in this determination.

19 **(b) Department's Notice to Development Fee Collection Unit at DBI of**
20 ***Requirements.*** Prior to issuance of a building or site permit for a development project subject to
21 the requirements of Section 418.1 et seq., the Department shall notify the Development Fee
22 Collection Unit at DBI of its final determination of the amount of Community Infrastructure and
23 SOMA Stabilization Fees required, including any fee credits for in-kind improvements, in
24 addition to the other information required by Section 402(b) of this Article.

1 (c) **Development Fee Collection Unit's Notice to Department Prior to Issuance**
2 **of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
3 provide notice in writing and electronically to the Department prior to issuing the first certificate
4 of occupancy for any development project subject to Section 418.1 et seq. that has elected to
5 fulfill all or part of the requirement with an In-Kind Improvement Agreement. If the Department
6 notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director
7 of DBI shall deny any and all certificates of occupancy until the subject project is brought into
8 compliance with the requirements of Section 418.1 et seq.

9 (d) **Process for Revisions of Determination of Requirements.** In the event that the
10 Department or the Commission takes action affecting any development project subject to
11 Section 418.1 et seq. and such action is subsequently modified, superseded, vacated, or
12 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
13 or by court action, the procedures of Section 402(c) shall be followed.

14
15 **SEC. 419.2. DEFINITIONS.** (a) In addition to the definitions set forth in Section 401 of this
16 Article:

17 (1) "Rental Housing Project" shall mean a project consisting solely of rental housing
18 units, as defined in Section ~~401 415.1(37)~~ that meets the following requirements:

19 (A) The units shall be rental housing for not less than 30 years from the issuance of
20 the certificate of occupancy pursuant to an agreement between the developer and the City.
21 This agreement shall be in accordance with applicable State law governing rental housing;

22 (B) A Notice of Special Restrictions (NSR), with the City as a third party beneficiary
23 and subject to written approval of the Director, shall be recorded on the title of the property
24 prior to final map approval containing the terms of the agreement described above in
25

1 subsection (1). Once the agreement is recorded against the property, the NSR shall
2 terminate.

3 (2) "Tier A." Sites within the UMU which do not receive zoning changes that
4 increase heights, as compared to allowable height prior to the rezoning (May 2008).

5 (3) "Tier B." Sites within the UMU which receive zoning changes that increase
6 heights by one to two stories.

7 (4) "Tier C." Sites within the UMU which receive zoning changes that increase
8 heights by three or more stories.

9

10 **SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

11 Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning
12 District of the Eastern Neighborhoods, that is subject to the requirements of Section 415 et
13 seq.

14 (b) Additional UMU Affordable Housing Requirements to the Section 415
15 Inclusionary Affordable Housing Program Requirements. The requirements of Section 415
16 through 415.9 shall apply subject to the following exceptions:

17 (1) For all projects sites designated as Tier A, a minimum of 18 percent of the total
18 units constructed shall be affordable to and occupied by qualifying persons and families as
19 defined elsewhere in this Code, so that a project sponsor must construct .18 times the total
20 number of units produced in the principal project beginning with the construction of the fifth
21 unit. If the total number of units is not a whole number, the sponsor shall round up to the
22 nearest whole number for any portion of .5 or above.

23 (A) If the project sponsor *is eligible for and* elects pursuant to Section 415.5(g)
24 ~~415.4(e)(2)~~, to build off-site units to satisfy the requirements of this program, the sponsor shall
25 construct 23 percent so that a sponsor must construct .23 times the total number of units

1 produced in the principal project beginning with the construction of the fifth unit. If the total
2 number of units is not a whole number, the sponsor shall round up to the nearest whole
3 number for any portion of .5 or above.

4 (B) If the project sponsor elects pursuant to Section ~~415.5~~ ~~415.4(e)(3)~~ to pay ~~an in-lieu~~
5 ~~the~~ fee to satisfy the requirements of this program, the sponsor shall meet the requirements of
6 Section 415 according to the number of units required above if the project applicant were to
7 elect to meet the requirements of this Section by off-site housing development. For the
8 purposes of this Section, the City shall calculate the fee using the direct fractional result of the
9 total number of units multiplied by the percentage of off-site housing required, rather than
10 rounding up the resulting figure ~~as required by Section 415.6(a)~~.

11 (2) For all project sites designated Tier B, a minimum of 20 percent of the total units
12 constructed shall be affordable to and occupied by qualifying persons and families as defined
13 elsewhere in this Code, so that a project sponsor must construct .20 times the total number of
14 units produced in the principal project beginning with the construction of the fifth unit. If the
15 total number of units is not a whole number, the sponsor shall round up to the nearest whole
16 number for any portion of .5 or above.

17 (A) If the project sponsor is eligible for and elects pursuant to Section 415.5(g)
18 ~~415.4(e)(2)~~, to build off-site units to satisfy the requirements of this program, the sponsor shall
19 construct 25 percent so that a sponsor must construct .25 times the total number of units
20 produced in the principal project beginning with the construction of the fifth unit. If the total
21 number of units is not a whole number, the sponsor shall round up to the nearest whole
22 number for any portion of .5 or above.

23 (B) If the project sponsor elects pursuant to Section 415.5(g) ~~415.4(e)(3)~~ to pay ~~an in-~~
24 ~~lieu~~ the fee to satisfy the requirements of this program, the sponsor shall meet the
25 requirements of Section 415 according to the number of units required above if the sponsor

1 were to elect to meet the requirements of this Section by off-site housing development. For
2 the purposes of this Section, the City shall calculate the fee using the direct fractional result of
3 the total number of units multiplied by the percentage of off-site housing required, rather than
4 rounding up the resulting figure *as required by Section 415.6(a)*.

5 (3) For all project sites designated Tier C, a minimum of 22 percent of the total units
6 constructed shall be affordable to and occupied by qualifying persons and families as defined
7 elsewhere in this Code, so that a project sponsor must construct .22 times the total number of
8 units produced in the principal project beginning with the construction of the fifth unit. If the
9 total number of units is not a whole number, the sponsor shall round up to the nearest whole
10 number for any portion of .5 or above.

11 (A) If the project sponsor *is eligible for and* elects pursuant to Section 415.5(g)
12 ~~415.4(e)(2)~~, to build off-site units to satisfy the requirements of this program, the sponsor shall
13 construct 27 percent so that a sponsor must construct .27 times the total number of units
14 produced in the principal project beginning with the construction of the fifth unit. If the total
15 number of units is not a whole number, the sponsor shall round up to the nearest whole
16 number for any portion of .5 or above.

17 (B) If the project sponsor elects pursuant to Section 415.5 ~~415.4(e)(3)~~ to pay *an in lieu*
18 *the* fee to satisfy the requirements of this program, the sponsor shall meet the requirements of
19 Section 415 according to the number of units required above if the sponsor were to elect to
20 meet the requirements of this Section by off-site housing development. For the purposes of
21 this Section, the City shall calculate the fee using the direct fractional result of the total
22 number of units multiplied by the percentage of off-site housing required, rather than rounding
23 up the resulting figure *as required by Section 415.6(a)*.

24 (c) Timing and Payment of Fee. Any fee required by Section 419.1 et seq. shall be
25 paid to the Development Fee Collection Unit at DBI prior to issuance of the first construction

1 document, with an option for the project sponsor to defer payment to prior to issuance of the
2 first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with
3 Section 107A.13.3 of the San Francisco Building Code.

4
5 **SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

6 The Department shall determine the applicability of Section 419.1 et seq. to any
7 development project requiring a *first construction document* ~~building or site permit~~ and, if Section
8 419.1 et seq. is applicable, the additional affordable housing required pursuant to Section
9 419.1 et seq. and shall impose these requirements as condition on the approval for issuance
10 of the *first construction document* ~~building or site permit~~ *for the development project*. The project
11 sponsor shall supply any information necessary to assist the Department in this determination.

12 (b) **Notice to Development Fee Collection Unit at DBI of Requirements.** After the
13 Department has made its final determination of the additional affordable housing required
14 pursuant to Section 419.1 et seq., it shall immediately notify the Development Fee Collection
15 Unit at DBI of its determination in addition to the other information required by Section 402(b)
16 of this Article.

17 (c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or
18 site permit for a development project subject to the requirements of Section 419.1 et seq., the
19 sponsor of the development project shall select one of the options described in Section 419.3
20 above or the alternatives described in Section 419.5 below to fulfill the affordable housing
21 requirements and notify the Department of their choice.

22 (d) **Department Notice to Development Fee Collection Unit of Sponsor Choice.**
23 After the sponsor has notified the Department of their choice to fulfill the additional affordable
24 housing requirements of Section 419.1 et seq., the Department shall immediately notify the
25 Development Fee Collection Unit at DBI of the sponsor's choice.

1 (e) **The Development Fee Collection Unit Notice to Department Prior to**
2 **Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at
3 DBI shall provide notice in writing or electronically to the Department prior to issuing the first
4 certificate of occupancy for any development project subject to Section 419.1 et seq. that has
5 elected to fulfill its requirement with an option other than payment of an in-lieu fee. If the
6 Department notifies the Unit at such time that the sponsor has not satisfied the requirements,
7 the Director of DBI shall deny any and all certificates of occupancy until the subject project is
8 brought into compliance with the requirements of Section 419.1 et seq.

9 (f) **Process for Revisions of Determination of Requirements.** In the event that
10 the Department or the Commission takes action affecting any development project subject to
11 Section 419.1 et seq. and such action is subsequently modified, superseded, vacated, or
12 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
13 or by court action, the procedures of Section 402(c) of this Article shall be followed.

14
15 **SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT. (a)**

16 **Alternatives to the Inclusionary Housing Component.** In addition to the alternatives
17 specified in Section ~~415.5(9) 415.4(c), (and further described above and in Section 415.6,~~
18 ~~Compliance Through Off-Site Housing Development, and Section 415.7. Compliance Through In-Lieu~~
19 ~~Fee, and described further above,~~ the project sponsor may elect to satisfy the requirements of
20 Section 415.5 by one of the alternatives specified in this Section. The project sponsor has the
21 choice between the alternatives and the Planning Commission may not require a specific
22 alternative. The project sponsor must elect an alternative before it receives project approvals
23 from the Planning Commission or Planning Department and that alternative will be a condition
24 of project approval. The alternatives are as follows:

1 (1) **Middle Income Alternative.** On sites with less than 50,000 square feet of total
2 developable area, applicants may provide units as affordable to qualifying "middle income"
3 households as follows:

4 (A) A minimum percent of the total units constructed shall be affordable to and
5 occupied affordable to qualifying "middle income" households upon initial sale, according the
6 schedule in Table 419A.4. If the total number of units is not a whole number, the project
7 applicant shall round up to the nearest whole number for any portion of .5 or above. Units
8 shall be affordable to households between 120 percent and 150 percent of the San Francisco
9 Area Median Income, with an average affordability level of 135 percent for all units provided
10 through this alternative.

11 (B) Where market rate sales prices exceed restricted sales prices, the difference
12 between the market rate sales prices and the restricted sales prices shall be held by the
13 Mayor's Office of Housing as a silent second mortgage according to the Procedures Manual.
14 The City shall hold a deed of trust and promissory note for the second mortgage. MOH shall
15 hold this mortgage shall release it when the original note and proportional share of the
16 appreciation are paid in full to the City.

17 (C) Units shall initially be sold at or below prices to be determined by MOH in the
18 Conditions of Approval or Notice of Special Restrictions according to the formula specified in
19 the Procedures Manual to make them affordable to middle income households. Upon resale,
20 the seller shall be permitted to sell the units at their market price. The City will waive its right
21 of first refusal to the seller when the promissory note and deed of trust are paid, along with the
22 City's share of the appreciation of the unit. The promissory note shall accrue no interest and
23 shall require no monthly payments.

24 (D) Upon first resale, the seller shall have a right to keep a percentage of the total
25 appreciation of the unit proportional to every year the original seller owns the unit as an owner

1 occupant. The remainder of the proceeds of the sale, after the first mortgage, the second
2 mortgage, and any other subordinate financing is paid off, shall be repaid to MOH. Detailed
3 resale procedures shall be specified in the Middle Income Housing Procedures Manual
4 published by MOH and approved by the Planning Commission. The Director of MOH shall
5 amend the Procedures Manual as needed with the Commission's approval.

6 (E) The City shall monitor units provided under this option during the 2- and 5-year
7 Monitoring Report specified in Section 342 of this Code and in separate resolution. Should
8 this monitoring report indicate that units constructed under this program do not meet the
9 programs stated goals of providing affordable housing to Middle Income Households, the
10 Planning Department and MOH shall consider changes to this program, including, but not
11 limited to, legislative changes.

12 (F) If the project sponsor elects to satisfy the requirements of Section 415.5 and of
13 this Section by the alternative specified above, the requirement that 40 percent of the total
14 number of proposed dwelling units shall contain at least two bedrooms may be waived
15 provided the minimum percent of total units affordable to qualifying "middle income" as
16 required by Table 419A.4 is increased by 10%.

17 (2) **Land Dedication Alternative.** Applicants may dedicate a portion of the total
18 developable area of the principal site to the City and County of San Francisco for the purpose
19 of constructing units affordable to qualifying households. A minimum percentage of
20 developable area, representing an equivalent percent of total potential units to be constructed,
21 shall be dedicated to the City according the schedule in Table 419A.4. To meet the
22 requirements of this alternative, the developer must convey title to land in fee simple absolute
23 to MOH according to the Procedures Manual, provided the dedicated site is deemed of
24 equivalent or greater value to the principal site per those procedures and is in line with the
25 following requirements:

1 (A) The dedicated site will result in a total amount of inclusionary units not less than
2 forty (40) units. MOH may conditionally approve and accept dedicated sites which result in no
3 less than twenty-five (25) units at its discretion.

4 (B) The dedicated site will result in a total amount of inclusionary units that is
5 equivalent or greater than the minimum percentage of the units that will be provided on the
6 principal site, as required by Table 419A.4. MOH may also accept dedicated sites that
7 represent the equivalent of or greater than the required percentage of units for all units be
8 provided on a collective of sites within a one-mile radius, provided the total amount of
9 inclusionary units provided on the dedicated site is equivalent to or greater than the total
10 requirements for all principal sites participating in the collective, according to the requirements
11 of Table 419A.4.

12 (C) The dedicated site is suitable from the perspective of size, configuration,
13 physical characteristics, physical and environmental constraints, access, location, adjacent
14 use, and other relevant planning criteria. The site must allow development of affordable
15 housing that is sound, safe and acceptable.

16 (D) The dedicated site includes infrastructure necessary to serve the inclusionary
17 units, including sewer, utilities, water, light, street access and sidewalks.

18 (E) The developer must submit full environmental clearance for the dedicated site
19 before the land can be considered for conveyance, and before a first site or building permit
20 may be conferred upon the principal project.

21 (F) The City may accept dedicated sites that vary from the minimum threshold
22 provided such a dedication is deemed generally equivalent to the original requirement by the
23 Mayor's Office of Housing.

24 (G) The City may accept dedicated sites that meet the above requirements in
25 accordance with the Procedures Manual, in combination with *in-lieu* fees or on-site units,

1 provided such a combination is deemed generally equivalent by MOH to the original
2 requirement.

3 (H) The project applicant has a letter from MOH verifying acceptance of site before it
4 receives project approvals from the Planning Commission or Planning Department, which
5 shall be used to verify dedication as a condition of approval.

6 (I) If the project sponsor elects to satisfy the requirements of Section 415.5 and of
7 this Section by the alternative specified above, the requirement that 40 percent of the total
8 number of proposed dwelling units shall contain at least two bedrooms may be waived.

9 (J) The Land Dedication Alternative may be satisfied through the dedication to the
10 City of air space above or adjacent to the project, upon the approval of MOH, or a successor
11 entity, and provided the other requirements of subsection (a)(2)(A)—(I) are otherwise
12 satisfied.

13 **TABLE 419A.4**

14 **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%

25 *Requirement increases by 5% if two-bedroom requirement is waived.

1 (b) Rental Incentive. Qualified rental housing projects, as defined in Section
2 419A.2(g), are allowed a reduction in their inclusionary housing requirements as follows:

3 (1) If the rental housing project chooses to meet its inclusionary housing
4 requirements through on-site construction, off-site construction, or an in-lieu fee, then the
5 project is entitled to a 3% reduction in the requirements specified above in subsection (a).

6 (2) If the rental housing project chooses to meet its inclusionary housing
7 requirements through the land dedication option for projects less than 30,000 square feet,
8 then the project is entitled to a 5% reduction in the requirements specified above in the
9 subsection (b)(2).

10 (3) In addition, a rental housing project shall receive a fee waiver from the Eastern
11 Neighborhood Public Benefit Fee as set forth in Section 427.3 in the amount of \$1.00 per
12 gross square foot.

13 (4) No rental incentive shall be provided for project that chooses the land dedication
14 alternative for projects over 30,000 square feet.

15 (c) **Adjustments to Requirements for the Inclusionary Housing Component.**

16 This Section is intended to incorporate, rather than supersede, any changes made to Planning
17 Code Section 415. In the instance that the base requirements of Section 415 are amended,
18 the above-noted requirements shall be reviewed, and if appropriate, amended and/or
19 increased accordingly.

20
21 **SEC. 420. VISITACION VALLEY COMMUNITY FACILITIES AND INFRASTRUCTURE FEE**
22 **AND FUND.**

23 Sections 420.1 through 420.6.5, hereafter referred to as Section 420.1 et seq., set forth
24 the requirements and procedures for the Visitacion Valley Community Facilities and
25 Infrastructure Fee and Fund. The effective date of these requirements shall be either

1 November 18, 2005, which is the date that the requirements originally became effective, or
2 the date a subsequent modification, if any, became effective.

3
4 **SEC 420.4. IMPOSITION OF REQUIREMENTS.**

5 (a) **Determination of Requirements.** The Department shall determine the
6 applicability of Section 420.1 et seq. to any development project requiring a *first construction*
7 *document building or site permit* and, if Section 420.1 et seq. is applicable, the net addition of
8 gross square feet of residential use subject to its requirements, and shall impose the fee
9 requirements as a condition of approval for issuance of the *first construction document building*
10 *or site permit for the development project*. The project sponsor shall supply any information
11 necessary to assist the Department in this determination.

12 (b) **Department Notice to Development Fee Collection Unit at DBI of**
13 **Requirements**. Prior to issuance of the building or site permit for a development project subject
14 to Section 420 et seq., the Department shall notify the Development Fee Collection Unit at
15 DBI of its final determination of any fee requirements, including any fee credits for in-kind
16 improvements, in addition to the other information required by Section 402(b) of this Article.

17 (c) **Development Fee Collection Unit Notice to Department.** The Development
18 Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department
19 prior to issuing the first certificate of occupancy for any development project subject to Section
20 420.1 et seq. that has elected to satisfy its fee requirement with credits-in-kind improvements.
21 If the Department notifies the Unit at such time that the sponsor has not satisfied the in-kind
22 improvements requirements of Section 420.3, the Director of DBI shall deny any and all
23 certificates of occupancy until the subject project is brought into compliance.

24 (d) **Process for Revisions of Determination of Requirements.** In the event that
25 the Department or the Commission takes action affecting any development project subject to

1 Section 420.1 et seq. and such action is subsequently modified, superseded, vacated, or
2 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
3 or by court action, the procedures of Section 402(c) of this Article shall be followed.
4

5 **SEC. 420.5 4. LIEN PROCEEDINGS.**

6 If, for any reason, the fee imposed under Section 420.3 remains unpaid following
7 issuance of the certificate of occupancy, the Development Fee Collection Unit at DBI shall
8 institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any
9 deferral surcharge, a lien against all parcels used for the development project in accordance
10 with Section 408 of this Article and Section 107A.13.215 of the San Francisco Building Code.
11

12 **SEC. 420.6 5. VISITACION VALLEY COMMUNITY FACILITIES AND INFRASTRUCTURE**
13 **FUND.**

14 (a) There is hereby established a separate fund set aside for a special purpose
15 entitled the Visitacion Valley Community Facilities and Infrastructure Fund ("Fund"). All
16 monies collected by DBI pursuant to Section 420.3(b) shall be deposited in the Fund which
17 shall be maintained by the Controller.

18 (b) The receipts in the Fund are, subject to the budgetary and fiscal provisions of
19 the Charter, to be used solely to fund community facilities and infrastructure in Visitacion
20 Valley, including but not limited to capital improvements to library facilities, playgrounds,
21 recreational facilities, open space, childcare, and transportation.

22 (c) No portion of the Fund may be used, by way of loan or otherwise, to pay any
23 administrative, general overhead, or similar expense of any public entity, except for the
24 administration of this fund in an amount not to exceed 4% of the total annual revenue.
25

1 (d) A public hearing shall be held by the Recreation and Parks Commissions to elicit
2 public comment on proposals for the acquisition of property using monies in the Fund or
3 through agreements for financing In-Kind Community Improvements via a Mello-Roos
4 Community Facilities District that will ultimately be maintained by the Department of
5 Recreation and Parks. Notice of public hearings shall be published in an official newspaper at
6 least 20 days prior to the date of the hearing, which notice shall set forth the time, place, and
7 purpose of the hearing. The Parks Commissions may vote to recommend to the Board of
8 Supervisors that it appropriate money from the Fund for acquisition of property for park use
9 and for development of property acquired for park use.

10 (e) The Planning Commission shall work with other City agencies and commissions,
11 specifically the Department of Recreation and Parks, DPW, and the Metropolitan
12 Transportation Agency, to develop agreements related to the administration of the
13 improvements to existing and development of new public facilities within public rights-of-way
14 or on any acquired property designed for park use, using such monies as have been allocated
15 for that purpose at a hearing of the Board of Supervisors.

16 (f) The Director of Planning shall have the authority to prescribe rules and
17 regulations governing the Fund, which are consistent with this Section 420.1 et seq. The
18 Director shall make recommendations to the Board regarding allocation of funds.

19 (g) The Controller's Office shall file an annual report with the Board of Supervisors
20 beginning one year after the effective date of Section 420.1 ~~418.1~~ et seq., which report shall
21 set forth the amount of money collected in the Fund.

22
23 **SEC. 421.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE.**

24 (a) **Determination of Requirements.** The Department shall determine the
25 applicability of Section 421.1 et seq. to any development project requiring a first construction

1 *document ~~building or site permit~~* and, if Section 421.1 is applicable, the number of gross square
2 feet of each type of space subject to its requirements, and shall impose these requirements as a
3 condition of approval for issuance of the *first construction document ~~building or site permit~~* for
4 the *development* project to mitigate the development impacts. The project sponsor shall supply
5 any information necessary to assist the Department in this determination.

6 (b) **Department Notice to Development Fee Collection Unit at DBI of**
7 ***Requirements.*** After the Department has made its final determination of the net addition of
8 gross square feet of each type of space subject to Section 421.1 et seq., it shall immediately
9 notify the Development Fee Collection Unit at DBI of its determination in addition to the other
10 information required by Section 402(b) of this Article.

11 (c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or
12 site permit for a development project subject to the requirements of Section 421.1 et seq., the
13 sponsor shall elect an option under Section 421.3 to fulfill the requirements of Section 421.1
14 et seq. and notify the Department of their choice.

15 (d) **Department's Notice to Development Fee Collection Unit of Sponsor's**
16 **Choice.** After the project sponsor has notified the Department of the choice to fulfill the
17 requirements of Section 421.1 et seq., the Department shall immediately notify the
18 Development Fee Collection Unit at DBI of the project sponsor's choice.

19 (e) **Development Fee Collection Unit Notice to Department Prior to Issuance of**
20 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
21 provide notice in writing or electronically to the Department prior to issuing the first certificate
22 of occupancy for any development project subject to Section 421.1 et seq. that has elected to
23 fulfill all or part of the requirement with an option other than payment of a fee. If the
24 Department notifies the Unit at such time that the sponsor has not satisfied the requirements,
25

1 the Director of DBI shall deny any and all certificates of occupancy until the subject project is
2 brought into compliance with the requirements of Section 421.1 et seq.

3 (f) **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
5 Section 421.1 et seq. and such action is subsequently modified, superseded, vacated, or
6 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
7 or by court action, the procedures of Section 402(c) shall be followed.

8
9 **SEC. 422.4. IMPOSITION OF COMMUNITY IMPROVEMENTS IMPACT FEE.**

10 (a) **Determination of Requirements.** The Department shall determine the
11 applicability of Section 422.1 et seq. to any development project requiring a building or site
12 permit and, if Section 422.1 et seq. is applicable, the amount of Community Improvements
13 Impact Fees required and shall impose these requirements as a condition of approval ~~for~~
14 ~~issuance of the building or site permit for~~ of the proposed development project. The project
15 sponsor shall supply any information necessary to assist the Department in this determination.

16 (b) **Department Notice to Development Fee Collection Unit at DBI of**
17 **Requirements.** Prior to the issuance of a building or site permit for a development project
18 subject to the requirements of Section 422.1 et seq., the Department shall notify the
19 Development Fee Collection Unit at DBI of its final determination of the amount of Community
20 Improvements Impact Fees required, including any reductions calculated for an In-Kind
21 Improvements Agreement, in addition to the other information required by Section 402(b) of
22 this Article.

23 (c) **Development Fee Collection Unit Notice to Department Prior to issuance of**
24 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
25 provide notice in writing or electronically to the Department prior to issuing the first certificate

1 of occupancy for any development project subject to Section 422.1 et seq. that has elected to
2 fulfill all or part of its Community Improvements Impact Fee requirement with an In-Kind
3 Improvements Agreement. If the Department notifies the Unit at such time that the sponsor
4 has not satisfied any of the terms of the In-Kind Improvements Agreement, the Director of DBI
5 shall deny any and all certificates of occupancy until the subject project is brought into
6 compliance with the requirements of Section 422.1 et seq., either through conformance with
7 the In-Kind Improvements Agreement or payment of the remainder of the Community
8 Improvements Impact Fees that would otherwise have been required, plus a deferral
9 surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

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
12 Section 422.1 et seq. and such action is subsequently modified, superseded, vacated, or
13 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
14 or by court action, the procedures of Section 402(c) of this Article shall be followed.

15 **SEC. 423.4. IMPOSITION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE**
16 **IMPACT FEE.**

17 (a) **Determination of Requirements.** The Department shall determine the
18 applicability of Section 423.1 et seq. to any development project requiring a first construction
19 document ~~building or site permit~~ and, if Section 423.1 et seq. is applicable, the amount of
20 Eastern Neighborhoods Infrastructure Impact Fees required and shall impose these
21 requirements as a condition of approval for issuance of the first construction document ~~building~~
22 ~~or site permit~~ for the *proposed* development project. The project sponsor shall supply any
23 information necessary to assist the Department in this determination.

24 (b) **Department Notice to Development Fee Collection Unit at DBI of**
25 **Requirements.** Prior to the issuance of a building or site permit for a development project

1 subject to the requirements of Section 423.1 et seq., the Department shall notify the
2 Development Fee Collection Unit at DBI of its final determination of the amount of Eastern
3 Neighborhoods Infrastructure Impact Fees required, including any reductions calculated for an
4 In-Kind Improvements Agreement, in addition to the other information required by Section
5 402(b) of this Article.

6 (c) **Development Fee Collection Unit Notice to Department Prior to issuance**
7 **of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
8 provide notice in writing or electronically to the Department prior to issuing the first certificate
9 of occupancy for any development project subject to Section 422.1 et seq. that has elected to
10 fulfill all or part of its Eastern Neighborhoods Impact Fee requirement with an In-Kind
11 Improvements Agreement. If the Department notifies the Unit at such time that the sponsor
12 has not satisfied any of the terms of the In-Kind Improvements Agreement, the Director of DBI
13 shall deny any and all certificates of occupancy until the subject project is brought into
14 compliance with the requirements of Section 422.1 et seq., either through conformance with
15 the In-Kind Improvements Agreement or payment of the remainder of the Eastern
16 Neighborhood Infrastructure Impact Fees that would otherwise have been required, plus a
17 deferral surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

18 (d) **Process for Revisions of Determination of Requirements.** In the event that the
19 Department or the Commission takes action affecting any development project subject to
20 Section 422.1 et seq. and such action is subsequently modified, superseded, vacated, or
21 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
22 or by court action, the procedures of Section 402(c) of this Article shall be followed.

23

24 **SEC. 424.3. APPLICATION OF VAN NESS AND MARKET AFFORDABLE HOUSING AND**
25 **NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

1 (a) Application. Section 424.1 et seq. shall apply to any development project located
2 in the Van Ness and Market Downtown Residential Special Use District, as established in
3 Section 249.33 of this Code.

4 (b) Amount of Fee.

5 (i) All uses in any development project within the Van Ness and Market Downtown
6 Residential Special Use District shall pay \$30.00 per net additional gross square foot of floor
7 area in any portion of building area exceeding the base development site FAR of 6:1 up to a
8 base development site FAR of 9:1.

9 (ii) All uses in any development project within the Van Ness and Market Downtown
10 Residential Special Use District shall pay \$15.00 per net additional gross square foot of floor
11 area in any portion of building area exceeding the base development site FAR of 9:1.

12 (c) Option for In-Kind Provision of Infrastructure Improvements and Fee Credits.

13 Project sponsors may propose to directly provide community improvements to the City. In such a case,
14 the City may enter into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver
15 from the neighborhood infrastructure portion (\$15.00 per net additional gross square foot of floor
16 area) of the Van Ness and Market Downtown Residential Special Use District Affordable Housing and
17 Neighborhood Infrastructure Fee from the Planning Commission, subject to the following rules and
18 requirements:

19 (1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the
20 proposed in-kind improvements meet an identified community need as analyzed in the Van Ness and
21 Market Affordable Housing and Neighborhood Infrastructure Program and where they substitute for
22 improvements that could be provided by the Van Ness and Market Downtown Residential Special Use
23 District Infrastructure Fee Fund (as described in Section 424.5). The City may reject in-kind
24 improvements if they are not consistent with the priorities identified in the Van Ness and Market
25 Affordable Housing and Neighborhood Infrastructure Program. No physical improvement or provision

1 of space otherwise required by the Planning Code or any other City Code shall be eligible for
2 consideration as part of this In-Kind Improvements Agreement.

3 (2) Valuation. The Director of Planning shall determine the appropriate value of the
4 proposed in-kind improvements. For the purposes of calculating the total value, the project sponsor
5 shall provide the Planning Department with a cost estimate for the proposed in-kind improvement(s)
6 from two independent sources or, if relevant, real estate appraisers. If the City has completed a
7 detailed site-specific cost estimate for a planned improvement this may serve as one of the cost
8 estimates provided it is indexed to current cost of construction.

9 (3) Content of the In-Kind Improvements Agreement. The In-Kind Improvements Agreement
10 shall include at least the following items:

11 (i) A description of the type and timeline of the proposed in-kind improvements.

12 (ii) The appropriate value of the proposed in-kind improvement, as determined in subsection
13 (2) above.

14 (iii) The legal remedies in the case of failure by the project sponsor to provide the in-kind
15 improvements according to the specified timeline and terms in the agreement. Such remedies shall
16 include the method by which the City will calculate accrued interest.

17 (4) Approval Process. The Planning Commission must approve the material terms of an In-
18 Kind Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the
19 agreement as to form and to substance. The Director of Planning is authorized to execute the
20 Agreement on behalf of the City. If the Planning Commission approves the In-Kind Agreement, it shall
21 waive the amount of the neighborhood infrastructure portion of the Van Ness and Market Downtown
22 Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee by the value
23 of the proposed In-Kind Improvements Agreement as determined by the Director of Planning. No credit
24 shall be made for land value unless ownership of the land is transferred to the City or a permanent
25 public easement is granted, the acceptance of which is at the sole discretion of the City. The maximum

1 value of the In-Kind Improvements Agreement shall not exceed the required neighborhood
2 infrastructure portion of the Van Ness and Market Affordable Housing and Neighborhood
3 Infrastructure Fee.

4 (5) Administrative Costs. Project sponsors that pursue an In-Kind Improvements Agreement
5 will be billed time and materials for any administrative costs that the Planning Department or any
6 other City entity incurs in negotiating, drafting, and monitoring compliance with the In-Kind
7 Improvements Agreement.

8 ~~The Commission may reduce the total amount of fees generated by the neighborhood infrastructure~~
9 ~~portion (\$15.00 per net additional gross square foot of floor area) of the Van Ness and Market~~
10 ~~Downtown Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee~~
11 ~~owed for specific development projects in cases where the Director has recommended approval and the~~
12 ~~project sponsor has entered into an In-Kind Improvements Agreement with the City. In-Kind~~
13 ~~Improvement Agreements may only be accepted if they are identified in the Market and Octavia Area~~
14 ~~Plan of the General Plan, mitigate impacts of growth in the general vicinity of the Van Ness and~~
15 ~~Market Downtown Residential Special Use District area, meet identified community needs as analyzed~~
16 ~~in the Market and Octavia Area Plan Community Improvements Program, and serve as a substitute for~~
17 ~~improvements funded by infrastructure impact fee revenue such as street improvements, transit~~
18 ~~improvements, and community facilities. Open space or streetscape improvements proposed to satisfy~~
19 ~~the usable open space requirements of Section 135 are not eligible as in-kind improvements. No~~
20 ~~proposal for in-kind improvements shall be accepted that does not conform to the criteria above.~~
21 ~~Project sponsors that pursue In-Kind Improvement Agreements with the City will be charged time and~~
22 ~~materials for any additional administrative costs that the Department or any other City agency incurs~~
23 ~~in processing the request.~~

24 ~~(1) — The \$15.00 per gross square foot neighborhood infrastructure portion of the Van Ness~~
25 ~~and Market Downtown Residential Special Use District Affordable Housing and Neighborhood~~

1 ~~Infrastructure Fee may be reduced by the total dollar value of any infrastructure improvements~~
2 ~~provided through an In-kind Improvements Agreement recommended by the Director and approved by~~
3 ~~the Commission. For the purposes of calculating the total dollar value, the project sponsor shall~~
4 ~~provide the Department with a cost estimate for the proposed in-kind improvement(s) from two~~
5 ~~independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-~~
6 ~~specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it~~
7 ~~is indexed to current cost of construction. Based on these estimates, the Director shall determine the~~
8 ~~appropriate value of the in-kind improvements and the Commission shall reduce the infrastructure~~
9 ~~portion of the Van Ness and Market Downtown Residential SUD Affordable Housing and~~
10 ~~Neighborhood Infrastructure Fee otherwise due by an equal amount. No credit shall be made for land~~
11 ~~value unless ownership of 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 also shall 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
19 **SEC. 430. SEVERABILITY.**

20 In the event that a court or agency of competent jurisdiction holds that federal or state law, rule
21 or regulation invalidates any clause, sentence, paragraph or section of this Article or the application
22 thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or
23 agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall
24 remain in effect.

1 Section 3. This section is uncodified.

2 (a) If an evaluation comparable to that required by Section 410 of this Article was
3 completed in 2010 or 2011 for a development fee imposed by this Article, that fee need not be
4 included in the 2011 comprehensive five-year evaluation required by Section 410.

5 (b) The Board of Supervisors hereby authorizes the Controller to make the fee
6 adjustments for 2011 authorized by Section 409(b) 30 days from the effective date of this
7 ordinance rather than on January 1, 2011.

8
9 Section 4. The San Francisco Administrative Code is hereby amended by repealing
10 Section 38.14, as follows:

11 **~~SEC. 38.14. SEVERABILITY.~~**

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

1 ~~herein; or had such person or entity been expressly exempted from the application of this ordinance. To~~
2 ~~this end the provisions of this ordinance are severable.~~

3

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

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7 By: _____
8 JUDITH A. BOYAJIAN
9 Deputy City Attorney

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