

REVISED LEGISLATIVE DIGEST

[Development Fee Collection Procedure; Administrative Fee.]

Ordinance amending the San Francisco Building Code by adding Section 107A.13 to establish a procedure for the Department of Building Inspection (DBI) to collect development impact and in lieu fees, to provide that the fees are payable prior to issuance of the first building permit or, in the case where a site permit is issued, the first addendum authorizing construction of the project, with a temporary option for the project sponsor to defer payment of 85 percent of the total amount of fees due, or 80 percent of the total amount of fees due if the project is subject to payment of a neighborhood infrastructure impact development fee, to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge on the amount owed that would be deposited into the same fund that receives the development fees, to require that any in-kind public benefits required in lieu of payment of development fees are implemented prior to issuance of the first certificate of occupancy for the project, to require DBI to generate a Project Development Fee Report prior to issuance of the building or site permit for the project listing all fees due with the opportunity for an appeal of technical errors to the Board of Appeals, to establish a Development Fee Collection Unit within DBI and a fee for administering the program; providing that the ordinance's operative date is July 1, 2010; and adopting findings, including environmental findings.

Existing Law

The City and County of San Francisco imposes a number of impact fees on development projects and also requires certain development projects to provide physical improvements, facilities or below market rate housing units ("development impact requirements") as a condition of approval of the building or site permit for the project. These development impact fees and requirements are imposed to mitigate the estimated impacts of increased demand for public services, facilities or housing caused by development projects. In many cases, the Planning Code gives project sponsors the option of paying a fee in lieu of providing the physical improvements, facilities or below market rate housing units ("in-lieu fees") to mitigate the effects of new development. Development impact and in-lieu fees are distinct and different from fee for service or permit processing fees, which reimburse the City for the actual time and material expenses of City staff in reviewing and approving the permits required for new development.

Most of the City's development impact fees, in-lieu fees, and development impact requirements are scattered throughout various sections of the San Francisco Planning Code. In addition to the Planning Code development impact fees and requirements, the Municipal Transportation Agency imposes a Transit Impact Development Fee (TIDF) on certain projects under Chapter 38 of the San Francisco Administrative Code, the San Francisco Public Utilities Commission imposes water and wastewater capacity charges and a sewer connection fee by

resolution of the PUC Commission, and the San Francisco Unified School District imposes a school fee under provisions of State law.

Most of the City's development fees are collected by the Office of the Treasurer prior to issuance of the first site or building permit; some, like the TIDF, are payable prior to issuance of the first certificate of occupancy. The school fee is currently collected by the School District prior to issuance of the first site or building permit, and the PUC divides its collection between site permit and first certificate of occupancy.

Amendments to Current Law

The proposed legislation adds Article 107A.13 to the San Francisco Building Code to provide that the Department of Building Inspection ("DBI") will collect all development impact and in-lieu fees, including fees assessed by the Public Utilities Commission and the School District if those agencies separately agree to participate in the new collection process proposed by this legislation. A companion ordinance will amend the Planning and Administrative Codes to relocate into one Article of the Planning Code all development impact fees, in-lieu fees, and development impact requirements and authorize DBI to collect development fees and enforce compliance with development impact requirements.

The legislation simplifies the existing law by requiring that all development fees be payable prior to issuance of the first building permit or other document authorizing construction of a development project, but provides that a project sponsor has the option to defer payment of 85 percent of the total amount of fees due, or 80 percent of the total amount of fees due if the project is subject to payment of a neighborhood infrastructure impact development fee, to a date prior to issuance of the first certificate of occupancy if the sponsor agrees to pay a deferral surcharge equivalent to the effective interest that the City would have accrued on the funds if it collected the fees at the earlier date. If the project is not subject to any of the six neighborhood infrastructure development fees listed, the 15 percent of the fees not deferred shall be deposited into the applicable fee account or, if there is more than one such account, divided equally among and deposited into all the applicable fee accounts; if the project is subject to one of the six neighborhood infrastructure development fees, the entire 20 percent of the pre-paid fees shall be deposited into the applicable neighborhood infrastructure impact fee account(s). This deferral option is available only to project sponsors who have not already paid the fee, and shall terminate on July 1, 2013 unless the Board of Supervisors extends the Fee Deferral Program.

A Development Fee Collection Unit will be established within DBI that will be funded by a fee for administrative services. The Unit will (1) receive and organize information from various City agencies concerning the amount of development fees owed or specific development impact requirements imposed, (2) work with the project sponsor and relevant agencies to resolve any disputes or questions concerning the development fees or development impact requirements, (3) ensure that the first construction document or first certificate of occupancy, if the sponsor has elected to defer payment, is not issued prior to payment of all development fees that are

due, (4) confirm with the Planning Department that any outstanding development impact requirements are satisfied prior to issuance of the first certificate of occupancy, (5) generate Project Development Fee Reports that will inform both project sponsors and the public of the applicability and application of the development impact fees and requirements and the status of compliance, (6) confirm that the project sponsor has executed a first source hiring agreement(s) for the development project consistent with Administrative Code Section 83.11, (7) process any development fee refunds, (8) publish and update a Citywide Development Fee Register of all development impact and in-lieu fees that the City imposes for the benefit of project sponsors and the public, (9) initiate lien procedures to collect outstanding development impact and in-lieu fees, and (10) perform such other duties as the Building Official requires. Any development fee disputes over the calculation of the fees that the Unit is unable to resolve may be appealed to the Board of Appeals.

The legislation also sets up a process by which City agencies notify the Development Fee Collection Unit at DBI of any development project that owes development impact or in-lieu fees and the dollar amounts owed so that the Unit may ensure that building permits or other construction documents, or certificates of occupancy if the project sponsor has elected to defer payment, are not issued prior to payment of all development fees that are due. If a development project is required to construct any physical improvements, facilities or below market rate housing units, the Unit will notify the agency or department responsible for monitoring implementation of the improvements prior to issuing the first certificate of occupancy for any project subject to such requirements to ensure that the requirements have been implemented to the satisfaction of the responsible department or agency.

Background Information

In March, 2008, San Francisco published its Citywide Development Impact Fee Study Consolidated Report. The purpose of the Study was to evaluate the overall state, effectiveness, and consistency of the City's development impact fee collection process and to identify improvements. Among other things, the Study cited the City's decentralized process as a problem. Centralizing the collection of development impact and in-lieu fees within DBI and providing a process whereby DBI can ensure that building permits, other documents that authorize construction, and certificates of occupancy for the project are not issued before all development fees are paid and/or development impact requirements are satisfied will: (1) centralize and streamline the process, (2) ensure the consistency and accuracy of fee collection and the enforcement of development impact requirements, and (3) provide information to both the sponsors of development projects and the public concerning the application and imposition of the City's myriad development fees and development impact requirements on development projects.

Another central goal of the legislation and its companion ordinance is to lessen the financial burden of the City's current development impact fee requirements to improve the financial viability of development projects on the margin so that they are comparatively easier to finance when conditions improve and construction lending is once again available. Working

with the affected City agencies, the Office of Economic and Workforce Development developed these specific changes as part of a larger set of stimulus policies designed to spur construction jobs and development revenues for the City. This will be done through a variety of policy changes.

Under current rules, the majority of the City's development impact fees are due prior to issuance of the first building or site permit. Allowing a project sponsor to defer collection of a significant portion of development impact fees to much later in the permitting process should lower initial equity participation requirements and/or the carrying costs of construction loans. The farther back in time the City can defer collection, the greater the financial benefit to individual development project pro-formas and the more likely a project will commence construction earlier than would be the case under the current system. Because most developers pay higher interest rates on commercial loans or equity to finance early payment of impact fees than the City Treasurer by collecting these fees early in the process, both the public and private project sponsors should benefit from a system that makes the City whole while allowing project sponsors to save the margin of difference between the private and public interest rates.

In addition to reducing the overall financial feasibility of individual projects, the requirement to pay development impact fees at the beginning of the DBI permitting process also prevents many project applicants from paying the permit processing fees necessary for DBI and the staff of other City agencies to review and approve individual building permits. This, in turn, exacerbates staff lay-offs in recessions by restricting the flow of permit processing fees to an even greater degree than might otherwise occur but for the requirement that impact fees be paid up-front. For larger projects, the cost of permit processing fees is relatively insignificant compared to the cost of development impact fees. When the business cycle eventually rebounds and developers can once again finance up-front development impact fees, DBI and other City agencies must re-hire staff to handle the increased permit load and a processing backlog ensues, adding further to delays. As a result, the construction of many projects that could have been "shovel ready" is further delayed.

The cost to the City of delaying fee collection is off-set by a deferral surcharge that would be required if a project sponsor elects to defer payment, the amount of which is equivalent to the interest the City would have earned on the funds. Allowing payment deferral is also off-set by the following factors: (1) the City cannot safely spend development impact fees when it collects them early in the permitting process because the fees will have to be refunded if the project is never actually built or occupied, (2) most, if not all, development impact fees are used for long-range planning efforts so delaying their collection is not necessarily delaying delivery of public infrastructure and affordable housing, (3) in any given fiscal year, once a project commences substantial construction, the City can assume, for budgetary reasons, that development impact fees will be available for capital projects and plan to spend that money accordingly, and (4) any "opportunity costs" attributable to deferring collection of development impact fees would be off-set with economic gains from earlier collection of property and

transfer tax proceeds due to projects commencing and selling or leasing sooner than under the current impact fee collection system.