

File No. 100917

Committee Item No. 2

Board Item No. 37

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date October 4, 2010

Board of Supervisors Meeting Date October 19, 2010

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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OTHER

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Uncodified Section of the Case 2010.0194T</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Resolution No. 18127</u> |
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Completed by: Alisa Somera Date October 1, 2010
Completed by: Alisa Somera Date October 7, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

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1 [Planning Code Amendments – Area Plan Impact Fee and Jobs-Housing Linkage Program
2 Modifications.]

3 Ordinance amending the San Francisco Planning Code sections related to Area Plan
4 Impact Fees (Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa
5 Park) and Jobs-Housing Linkage Fee to (1) improve Planning Code readability and ease
6 of application with regard to impact fees; to (2) create consistent definitions and
7 application across the Area Plan Impact Fee and Jobs-Housing Linkage Fee
8 provisions; to (3) better recognize and account for the impact of existing conditions of
9 development sites affected by the Area Plan Impact Fees and the Jobs-Housing
10 Linkage Fee; to (4) promote adaptive re-use of existing buildings in the Eastern
11 Neighborhoods; to and (5) clarify the impact fees associated with the Eastern
12 Neighborhoods' on-going "legitimization" program; and adopting findings, including
13 Section 302, environmental findings, and findings of consistency with the General Plan
14 and Planning Code Section 101.1.

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

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

19 Section 1. Findings. The Board of Supervisors of the City and County of San
20 Francisco hereby finds and declares as follows:

21 (a) The Planning Department has determined that the actions contemplated in this
22 Ordinance are in compliance with the California Environmental Quality Act (California Public
23 Resources Code sections 21000 et seq.). Said determination is on file with the Clerk of the
24 Board of Supervisors in File No. 100917 and is incorporated herein by reference.

25 Planning Department
BOARD OF SUPERVISORS

1 (b) On _____, 2009, July 1, 2010, the Planning Commission,
2 in Resolution No. 18127 approved and recommended for adoption by the Board this
3 legislation and adopted findings that it is consistent, on balance, with the City's General Plan
4 and eight priority policies of Planning Code Section 101.1. The Board adopts these findings
5 as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in
6 File No. 100917, and is incorporated by reference herein.

7 (c) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
8 legislation will serve the public necessity, convenience, and welfare for the reasons set forth in
9 Planning Commission Resolution No. 18127, and incorporates such reasons by reference
10 herein.

11 (d) This ordinance modifies, but does not increase, fees in the Jobs-Housing
12 Linkage Fee and the following Area Plans: Rincon Hill, Market and Octavia, Eastern
13 Neighborhoods, and Balboa Park. Support for those fees is found in the original Board of
14 Supervisor's files corresponding to the adoption of the Area Plans and the fees. Those
15 findings and, where applicable, studies can be found in Board of Supervisors File Nos.
16 050865 (Rincon Hill), 071157 (Market & Octavia), 081153 (Eastern Neighborhoods), 090181
17 (Balboa Park).

18 In addition to modifying the original fees, this ordinance clarifies the City's policy for
19 charging fees on change of use, net addition of use, replacement of use, and/or legitimization
20 of uses. To the extent that the support for these modifications was not provided in the original
21 legislation adopting the Area Plans, the Planning Department has prepared staff reports on
22 this subject that establish the methodology for calculating fees for change of use and
23 legitimization of uses. Those staff reports are on file in Board of Supervisors File No. 100917
24 and are incorporated by reference herein. The Board of Supervisors has reviewed the staff
25 analysis and reports and, on that basis finds that the reports and prior findings and studies

1 done to support the imposition of the original Area Plan fees (together "reports") support the
2 current fees for change of use or legitimization of use. Specifically, the Board finds that the
3 reports: identify the purpose of the fees to mitigate impacts on development in the Area
4 Plans; identify the uses to which the fees are to be put; and establishes a reasonable
5 relationship between the uses of the fees and the need for that community-serving
6 infrastructure. Moreover, the Board finds that the current Area Plan fees are less than the cost
7 of mitigation and do not include the costs of remedying any existing deficiencies. The Board
8 also finds that the reports establish that the current Area Plan fees do not duplicate other city
9 requirements or fees.

10 Section 2. The San Francisco Planning Code is hereby amended by amending and
11 adding Sections 179.1, 401, 413.3, 413.5, 413.6, 413.8, 416.3, 418, 418.2, 418.3, 418.5,
12 418.6, 418.7, 421.1, 421.3, 421.5, 421.7, 422.3, 423.2, 423.3, 423.5, and 428 to read as
13 follows:

14 **SEC. 179.1 LEGITIMIZATION OF USES LOCATED IN THE EASTERN**
15 **NEIGHBORHOODS.**

16 (a) Intent. As a result of the Eastern Neighborhoods Zoning Controls, certain land
17 uses that were previously permitted, particularly office and housing, are no longer permitted.
18 The purpose of this Section is to establish a time-limited program wherein existing uses that
19 have operated without the benefit of required permits may seek those permits. Uses that
20 could be "legitimized" under this Section are those uses which, under the current provisions of
21 this Code and without this Section, could not otherwise seek the required permits.

22 (b) Applicability.

23 (1) Geography. This Section shall apply only to property located in the Eastern
24 Neighborhoods Mixed Use Districts, the SLI District, or any PDR District which is located
25

1 within the boundaries of the Eastern Neighborhoods Project Area pursuant to Section 327.2(j).
2 This Section shall not apply to any Live/Work use as set forth in Section 233.

3 (2) Eligibility. Any use that is the subject of an application under this Section shall
4 be one that is determined by the Zoning Administrator as one which:

5 (A) exists as of the date of the application;

6 (B) would have been principally permitted or permitted with conditional use
7 authorization under provisions of the Planning Code that were effective on April 17, 2008;

8 (C) would not be permitted under current provisions of this Code;

9 (D) is a land use that either:

10 (1) has been regularly operating or functioning on a continuous basis for no less
11 than 2 years prior to the effective date of this Section; or

12 (2) has been functioning in the space since at least April 17, 2008, and is
13 associated with an organization, entity or enterprise which has been located in this space on
14 continuous basis for no less than 2 years prior to the effective date of this Section;

15 (E) is not accessory to any other use; and

16 (F) is not discontinued and abandoned pursuant to the provisions of Section 183
17 that would otherwise apply to nonconforming uses.

18 (3) Sunset. All applications for a determination of eligibility under Subsection (d)
19 must be received by the Zoning Administrator within three years of the effective date of this
20 Section. If the Planning Department fails to timely issue notice pursuant to Subsection (c), the
21 Zoning Administrator may extend this termination date for an additional period of time not to
22 exceed the number of days that the Department delayed in issuing the notice.

23 (c) Notification of Program Availability. Within 90 days of the effective date of this
24 Section, the Planning Department shall cause notice to be mailed to all owners of property to
25 which this Section applies. Such notification shall consist of an explanation of this program

1 and application instructions and any other relevant information determined by the Zoning
2 Administrator.

3 (d) Application for Eligibility. An application under this Section may include multiple
4 tenancies and/or uses on a property; however, only one application may be made per parcel
5 for the duration of the program. Such application may not involve any expansion or
6 intensification of the use in question. Any proposed expansion or intensification must be made
7 under separate application and is subject to all current provisions of this Code.

8 Any application under this Subsection shall be accompanied by the following materials:

9 (1) Floor plans for the entire building along with specific demarcation of the space
10 proposed for legitimization;

11 (2) evidence supporting the findings required under Subsection (b)(2) above. Such
12 evidence may include but is not necessarily limited to the following: rental or lease
13 agreements, building or other permits, utility records, business licenses, or tax records; and

14 (3) notification materials, including a list of all property owners within 300 feet of the
15 subject property, as set forth in Section 306.3(a)(2) and, to the extent practical, a complete list
16 of all current occupants of the subject property.

17 (e) Determination of Eligibility. The Zoning Administrator shall determine
18 compliance with the criteria set forth in Subsection (b)(2), above, through a written decision.
19 No less than 30 days prior to making a determination, the Zoning Administrator shall mail and
20 post a notice of intent to render a determination as set forth below so that parties other than
21 the applicant are afforded the opportunity to present information which may have bearing on
22 the determination;

23 (1) By mailing notice to owners within 300 feet of the property in question as set
24 forth in Section 306.3(a)(2);

1 (2) by mailing notice to current tenants of the subject property using materials
2 submitted pursuant to Section (d)(3), above;

3 (3) by mailing notice to all individuals or neighborhood organizations having made
4 written request for notification for either (i) applications under this Section or (ii) specific
5 properties or areas; and

6 (4) by posting a notice on the subject property as set forth in Section 306.8.

7 (f) Application to Legitimize. Uses that are determined to be in compliance with the
8 criteria of Subsection (b)(2), above, shall be governed as set forth below. Unless specifically
9 stated by the Planning Commission in the case of a Conditional Use authorization, approval of
10 any application under this Subsection shall be deemed to authorize all aspects of the use and
11 portions of the structure housing the use under the Planning Code. Those portions of the use
12 or structure that do not comply with current provisions of this Code shall be deemed
13 nonconforming uses or noncomplying structures under Article 1.8 of this Code. Action under
14 this Subsection ~~shall~~ in no way shall affect the applicability of relevant portions of the Building
15 Code or other portions of the Municipal Code.

16 (1) Those uses which, under the provisions of this Code that were applicable on
17 April 17, 2008, would have either: (i) required Conditional Use authorization pursuant to
18 Section 303 or (ii) been principally permitted but required an allocation of office space of less
19 than 50,000 gross square feet under the Annual Limit pursuant to Section 321(b)(4), may
20 seek such authorization pursuant to all requirements of the applicable Section.

21 (2) Those uses which, under the provisions of this Code that were applicable on
22 April 17, 2008, were principally permitted may seek a building permit in order to legally
23 establish the use. Upon the Department's determination that the application is consistent with
24 the enabling Zoning Administrator's decision, the Planning Department shall approve such
25 permit.

1 (3) Those uses which, under the provisions of this Code that were applicable on
2 April 17, 2008, would have required an allocation of office space of 50,000 or more gross
3 square feet under the Annual Limit, may seek such authorization pursuant to the requirements
4 of Section 321; however, no application may be acted on by the Planning Commission until
5 the termination date of the application period set forth in Subsection (b)(3), above. After that
6 time, Planning Department staff shall take all reasonable steps to schedule pending eligible
7 applications for Planning Commission review based on the order in which a project's
8 determination of eligibility was issued. Nothing in this Section shall preclude the Director of
9 Planning, based on the demand for participation in this program, from limiting the number of
10 projects that appear before the Planning Commission in a given period of time.

11 (g) Fee amount. Any use authorized under Subsection (f) above shall, in addition to any
12 applicable application fees, pay for the area being legitimized the following impact fees:

13 (1) If the use is legitimizing as office, (as defined in Sec. 890.70)

14 (A) If the project is subject to the Transit Impact Development Fee (as defined in Section
15 411 described in Sec. 38 of the Administrative Code), a \$2.00/gross square foot Transit Impact
16 Development Fee.

17 (B) If the project is subject to the Jobs-Housing Linkage Fee (as as defined in Section
18 413 described in Sec. 313), an \$8.50/gross square foot Jobs-Housing Linkage Fee.

19 (C) No Eastern Neighborhoods Impact Fees shall be charged

20 (2) If the use is legitimizing as Integrated PDR, (as defined in Sec. 890.49)

21 (A) If the project is subject to the Transit Impact Development Fee (as defined in Section
22 411 described in Sec. 38 of the Administrative Code), a \$2.00/gross square foot Transit Impact
23 Development Fee.

24 (B) If the project is subject to the Jobs-Housing Linkage Fee (as as defined in Section
25 413 described in Sec. 313), a \$4.00/gross square foot Jobs-Housing Linkage Fee.

1 (C) No Eastern Neighborhoods Impact Fees shall be charged

2 (3) If the use is legitimizing as retail (as defined in Sec. 217) or entertainment (as defined in
3 Sec. 313.1.16)

4 (A) If the project is subject to the Transit Impact Development Fee (as defined in Section
5 411 described in Sec. 38 of the Administrative Code), a \$2.00/gross square foot Transit Impact
6 Development Fee.

7 (B) If the project is subject to the Jobs-Housing Linkage Fee (as described in Sec. 413313),
8 a \$7.20/gross square foot Jobs-Housing Linkage Fee.

9 (C) No Eastern Neighborhoods Impact Fees shall be charged

10 (4) If the use is legitimized as any other use authorized under Subsection (f) above, the use
11 shall pay the Jobs-Housing Linkage Fee and Transit Impact Development Fee in the amount applicable
12 as of January 18, 2009.

13 (h) Fee payment. Any use authorized under Subsection (f) above shall pay all current fees
14 set forth in Article 3 and elsewhere in this Code. Fees may be paid when required by the applicable
15 Section Fees shall be paid upon issuance of the first construction permit (as defined in Sec. 401) or an
16 applicant may elect to participate in a deferred payment program, as specified below:

17 (1) Prior to issuance by DBI of the first construction permit, a At least 20% of applicable
18 fees are due. ~~annually following the issuance of the first site or building permit and~~ Henceforth, at
19 least 20% of applicable fees are due by July 1st of each subsequent calendar year, such that final
20 payment must be made within ~~five~~ four years of receiving the first building or site permit.

21 (2) The applicant may elect to pay any outstanding balance at any time within these
22 five four years.

23 (3) A Notice of Special Restrictions shall be placed on the title of the property
24 specifying that additional payment is required. This Notice of Special Restrictions shall be
25 released when payment is complete.

1 (4) All outstanding fees will be adjusted annually based on the cost of living as
2 defined by the Controller's Office.

3 (5) The Department may assess an additional fee for time and materials spent
4 implementing this deferred fee program.

5 (6) Failure to comply with the terms of the program and associated NSR as
6 specified in this Subsection shall be deemed a violation of this Code and result in an
7 enforcement action by the Department, which may include, referral to the Bureau of
8 Delinquent Revenue and a lien on the subject property. Any enforcement action also may
9 result in additional charges or penalties to cover the City's costs in the enforcement action,
10 including, but not limited to City Attorney's fees.

11 **SEC. 401. DEFINITIONS.**

12 (a) In addition to the specific definitions set forth elsewhere in this Article, the following
13 definitions shall govern interpretation of this Article:

14 (1) "Affordable housing project." A housing project containing units constructed to
15 satisfy the requirements of Sections 413.5, 413.8, 415.4, or 4.5.5 of this Article, or receiving
16 funds from the Citywide Affordable Housing Fund.

17 (2) "Affordable to a household." A purchase price that a household can afford to pay
18 based on an annual payment for all housing costs of 33 percent of the combined household
19 annual net income, a 10 percent down payment, and available financing, or a rent that a
20 household can afford to pay based on an annual payment for all housing costs of 30 percent
21 of the combined annual net income.

22 (3) "Affordable to qualifying households":

23 (A) With respect to owned units, the average purchase price on the initial sale of all
24 affordable owned units in an affordable housing project shall not exceed the allowable
25 average purchase price. Each unit shall be sold:

1 (i) Only to households with an annual net income equal to or less than that of a
2 household of moderate income; and

3 (ii) At or below the maximum purchase price.

4 (B) With respect to rental units in an affordable housing project, the average annual
5 rent shall not exceed the allowable average annual rent. Each unit shall be rented:

6 (i) Only to households with an annual net income equal to or less than that of a
7 household of lower income;

8 (ii) At or less than the maximum annual rent.

9 (4) "Allowable average purchase price":

10 (A) For all affordable one-bedroom units in a housing project, a price affordable to a
11 two-person household of median income as set forth in Title 25 of the California Code of
12 Regulations Section 6932 ("Section 6932") on January 1st of that year;

13 (B) For all affordable two-bedroom units in a housing project, a price affordable to a
14 three-person household of median income as set forth in Section 6932 on January 1st of that
15 year;

16 (C) For all affordable three-bedroom units in a housing project, a price affordable to
17 a four-person household of median income as set forth in Section 6932 on January 1st of that
18 year;

19 (D) For all affordable four-bedroom units in a housing project, a price affordable to a
20 five-person household of median income as set forth in Section 6932 on January 1st of that
21 year.

22 (1) "Affordable to qualifying middle income households":

23 (A) With respect to owned units, the average purchase price on the initial sale of all
24 qualifying middle income units shall not exceed the allowable average purchase price deemed
25 acceptable for households with an annual gross income equal to or less than the qualifying

1 limits for a household of middle income, adjusted for household size. This purchase price shall
2 be based on household spending of 35% of income for housing, and shall only apply to initial
3 sale, and not for the life of the unit.

4 (B) With respect to rental units, the average annual rent--including the cost of
5 utilities paid by the tenant according to the HUD utility allowance established by the San
6 Francisco Housing Authority -- for qualifying middle income units shall not exceed the
7 allowable average purchase price deemed acceptable for households with an annual gross
8 income equal to or less than the qualifying limits for a household of middle income, adjusted
9 for household size. This price restriction shall exist for the life of the unit.

10 (5) "Allowable average annual rent":

11 (A) For all affordable one-bedroom units in a housing project, 18 percent of the
12 median income for a household of two persons as set forth in Section 6932 on January 1st of
13 that year;

14 (B) For all affordable two-bedroom units in a housing project, 18 percent of the
15 median income for a household of three persons as set forth in Section 6932 on January 1st
16 of that year;

17 (C) For all affordable three-bedroom units in a housing project, 18 percent of the
18 median income for a household of four persons as set forth in Section 6932 on January 1st of
19 that year;

20 (D) For all affordable four-bedroom units in a housing project, 18 percent of the
21 median income for a household of five persons as set forth in Section 6932 on January 1st of
22 that year.

23 (6) "Annual gross income." Gross income as defined in CCR Title 25, Section 6914,
24 as amended from time to time, except that MOH may, in order to promote consistency with
25

1 the procedures of the San Francisco Redevelopment Agency, develop an asset test that
2 differs from the State definition if it publishes that test in the Procedures Manual.

3 (7) "Annual net income." Net income as defined in Title 25 of the California Code of
4 Regulations Section 6916.

5 (8) "Average annual rent." The total annual rent for the calendar year charged by a
6 housing project for all affordable rental units in the project of an equal number of bedrooms
7 divided by the total number of affordable units in the project with that number of bedrooms.

8 (9) "Average purchase price." The purchase price for all affordable owned units in
9 an affordable housing project of an equal number of bedrooms divided by the total number of
10 affordable units in the project with that number of bedrooms.

11 (10) "Balboa Park Community Improvements Fund." The fund into which all fee
12 revenue the City collects from the Balboa Park Impact Fee is deposited.

13 (11) "Balboa Park Community Improvements Program." The program intended to
14 implement the community improvements identified in the Balboa Park Area Plan, as
15 articulated in the Balboa Park Community Improvements Program Document on file with the
16 Clerk of the Board *in File No. 090179*.

17 (12) "Balboa Park Impact Fee." The fee collected by the City to mitigate impacts of
18 new development in the Balboa Park Program Area, as described in the findings in Section
19 422.1.

20 (13) "Balboa Park Program Area." The Balboa Park Plan Area in Figure 1 of the
21 Balboa Park Station Area Plan of the San Francisco General Plan.

22 (14) "Base service standard." The relationship between revenue service hours
23 offered by the Municipal Railway and the number of automobile and transit trips estimated to
24 be generated by certain non-residential uses, expressed as a ratio where the numerator
25 equals the average daily revenue service hours offered by MUNI and the denominator equals

1 the daily automobile and transit trips generated by non-residential land uses as estimated by
2 the TIDF Study or updated under Section 411.5 of this Article.

3 (15) "Base service standard fee rate." The TIDF that would allow the City to recover
4 the estimated costs incurred by the Municipal Railway to meet the demand for public transit
5 resulting from new development in the economic activity categories for which the fee is
6 charged, after deducting government grants, fare revenue, and costs for non-vehicle
7 maintenance and general administration.

8 (16) "Board" or "Board of Supervisors." The Board of Supervisors of the City and
9 County of San Francisco.

10 (17) "Change of Use". A change of gross floor area from one category of use to another
11 category of use listed in the use table for the zoning district of the subject lot.

12 (1817) "Child-care facility." A child-care facility as defined in California Health and
13 Safety Code Section 1596.750.

14 (1918) "Child-care provider." A provider as defined in California Health and Safety Code
15 Section 1596.791.

16 (2019) "City" or "San Francisco." The City and County of San Francisco.

17 ~~(20) "Commercial Space Subject to the Market and Octavia Community Infrastructure~~
18 ~~Impact Fee." For each net addition of occupiable square feet within the Program Area which results in~~
19 ~~an additional commercial unit or any increased commercial capacity that is beyond 20 percent of the~~
20 ~~non-residential capacity at the time that requirements originally became effective.~~

21 ~~(21) "Commercial development project." Any new construction, addition, extension,~~
22 ~~conversion or enlargement, or combination thereof, of an existing structure which includes any~~
23 ~~occupied floor area of commercial use; provided, however, that for projects that solely comprise an~~
24 ~~addition to an existing structure which would add occupied floor area in an amount less than 20~~

1 ~~percent of the occupied floor area of the existing structure, the provisions of this Article shall only~~
2 ~~apply to the new occupied square footage.~~

3 ~~(222) "Commercial use." Any structure or portion thereof intended for occupancy by retail or~~
4 ~~office uses that qualify as an accessory use, as defined and regulated in Sections 204 through 204.5 of~~
5 ~~this Code.~~

6 (2223) "Commission" or "Planning Commission." The San Francisco Planning
7 Commission.

8 (2324) "Community apartment." As defined in San Francisco Subdivision Code Section
9 1308(b).

10 (2425) "Community facilities." All uses as defined under Section 209.4(a) and 209.3(d)
11 of this Code.

12 (2526) "Condition of approval" or "Conditions of approval." A condition or set of written
13 conditions imposed by the Planning Commission or another permit-approving or issuing City
14 agency or appellate body to which a project applicant agrees to adhere and fulfill when it
15 receives approval for the construction of a development project subject to this Article .

16 (2627) "Condominium." As defined in California Civil Code Section 783.

17 (2728) "Cultural/Institution/Education (CIE)." An economic activity category subject to
18 the TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and
19 (i) and 217(f)-(i) of this Code; child care facilities; museums and zoos; and community facilities
20 , as defined in Sections 209.4 and 221(a)-(c) of this Code.

21 (2829) "DBI." The San Francisco Department of Building Inspection, or its successor.

22 (2930) "Dedicated." Legally transferred to the City and County of San Francisco,
23 including all relevant legal documentation, at no cost to the City.

24 (3031) "Dedicated site." The portion of site proposed to be legally transferred at no cost
25 to the City and County of San Francisco under the requirements of this section.

1 (3132) "Department" or "Planning Department." The San Francisco Planning
2 Department or the Planning Department's designee, including the Mayor's Office of Housing
3 and other City agencies or departments.

4 (3233) "Designated affordable housing zones." For the purposes of implementing the
5 Eastern Neighborhoods Public Benefits Fund, shall mean the Mission NCT defined in Section
6 736 and the Mixed Use Residential District defined in Section 841.

7 (3334) "Development fee." Either a development impact fee or an in-lieu fee. It shall not
8 include a fee for service or any time and material charges charged for reviewing or processing
9 permit applications.

10 (3435) "Development Fee Collection Unit" or "Unit." The Development Fee Collection
11 Unit at DBI.

12 (3536) "Development impact fee." A fee imposed on a development project as a
13 condition of approval to mitigate the impacts of increased demand for public services, facilities
14 or housing caused by the development project that may or may not be an impact fee
15 governed by the California Mitigation Fee Act (California Government Code Section 66000 et
16 seq.).

17 (3637) "Development impact requirement." A requirement to provide physical
18 improvements, facilities or below market rate housing units imposed on a development project
19 as a condition of approval to mitigate the impacts of increased demand for public services,
20 facilities or housing caused by the development project that may or may not be governed by
21 the California Mitigation Fee Act (California Government Code Section 66000 et seq.).

22 (3738) "Development project." Any change of use within an existing structure, addition to an
23 existing structure, or new construction, which includes any occupied floor area. ~~A project that is subject~~
24 ~~to a development impact or in-lieu fee or development impact requirement.~~

1 (3839) "Development under the TIDF." Any new construction, or addition to or
2 conversion of an existing structure under a building or site permit issued on or after
3 September 4, 2004, that results in 3,000 gross square feet or more of a covered use. In the
4 case of mixed use development that includes residential development, the term "new
5 development" shall refer to only the non-residential portion of such development. "Existing
6 structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF
7 ordinance, as well as a structure for which no TIDF was paid.

8 (3940) "Director." The Director of Planning or his or her designee.

9 (4041) "DPW." The Department of Public Works, *or its successor*.

10 (4142) "Eastern Neighborhoods Infrastructure Impact Fee." The fee collected by the
11 City to mitigate impacts of new development in the Eastern Neighborhoods Program Area, as
12 described in the Findings in Section 423.1

13 (4243) "Eastern Neighborhoods Public Benefits Fund." The fund into which all fee
14 revenue collected by the City from the Eastern Neighborhoods Impact Fee is deposited.

15 (4344) "Eastern Neighborhoods Public Benefits Program." The program intended to
16 implement the community improvements identified in the four Area Plans affiliated with the
17 Eastern Neighborhoods (Central Waterfront, East SoMa, Mission, and Showplace
18 Square/Potrero Hill), as articulated in the Eastern Neighborhoods Public Benefits Program
19 Document, on file with the Clerk of the Board in File No. 081155.)

20 (4445) "Eastern Neighborhoods Program Area." The Eastern Neighborhoods Plan Area
21 in Map 1 (Land Use Plan) of the Eastern Neighborhoods Area Plan of the San Francisco
22 General Plan.

23 (4546) "Economic activity category." Under the TIDF, one of the following six categories
24 of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and
25

1 Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair
2 (PDR), Retail/Entertainment, and Visitor Services.

3 ~~(47) "Entertainment development project." Any new construction, addition, extension,~~
4 ~~conversion, or enlargement, or combination thereof, of an existing structure which includes any gross~~
5 ~~square feet of entertainment use.~~

6 (4648) "Entertainment use". Space within a structure or portion thereof intended or
7 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning Code
8 Sections 102.17 (Nighttime Entertainment), 790.38 and 890.37 (Other Entertainment), 790.36 and
9 890.36 (Adult Entertainment), 790.64 and 890.64 (Movie Theater), and 790.4 and 890.4 (Amusement
10 Arcade), regardless of the zoning district that the use is located in. a nighttime entertainment use as
11 defined in San Francisco Planning Code Section 102.17, a movie theater use as defined in San
12 Francisco Planning Code Sections 790.64 and 890.64, an adult theater use as defined in San Francisco
13 Planning Code Section 191, any other entertainment use as defined in San Francisco Planning Code
14 Sections 790.38 and 890.37, and, notwithstanding San Francisco Planning Code Section 790.38, an
15 amusement game arcade (mechanical amusement devices) use as defined in San Francisco Planning
16 Code Sections 790.4 and 890.4. Under this Article, "entertainment use" shall include all office and
17 other uses accessory to the entertainment use, but excluding retail uses and office uses not accessory to
18 the entertainment use.

19 (4749) "First certificate of occupancy." Either a temporary certificate of occupancy or a
20 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
21 Section 109A, whichever is issued first.

22 (4850) "First construction document." As defined in Section 107A.13.1 of the San
23 Francisco Building Code.

24 (4951) "Gross floor area." The total area of each floor within the building's exterior
25 walls, as defined in Section 102.9(b)(12) of this Code.

1 (5052) "Gross square feet of use." The meaning set forth in Section 102.9 of this Code, with
2 the exception of the TIDF. With respect to the TIDF, the total square feet of gross floor area in a
3 building and/or space within or adjacent to a structure devoted to all uses covered by the
4 TIDF, including any common areas exclusively serving such uses and not serving residential
5 uses. Where a structure contains more than one use, areas common to two or more uses,
6 such as lobbies, stairs, elevators, restrooms, and other ancillary spaces included in gross floor
7 area that are not exclusively assigned to one uses shall be apportioned among the two or
8 more uses in accordance with the relative amounts of gross floor area, excluding such space,
9 in the structure or on any floor thereof directly assignable to each use.

10 ~~(53) "Gross square footage." The meaning set forth in Section 102.9 of this Code.~~

11 ~~(54) "Hotel development project." Any new construction, addition, extension, conversion, or~~
12 ~~enlargement, or combination thereof, of an existing structure which includes any gross square feet of~~
13 ~~hotel use.~~

14 (5155) "Hotel" or "Hotel use." Space within a structure or portion thereof intended or
15 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning Code
16 Sections 790.46 and 890.46, regardless of the zoning district that the use is located in. ~~rooms, or suites~~
17 ~~of two or more rooms, each of which may or may not feature a bathroom and cooking facility or~~
18 ~~kitchenette and is designed to be occupied by a visitor or visitors to the City who pays for~~
19 ~~accommodations on a daily or weekly basis but who do not remain for more than 31 consecutive days.~~
20 ~~Under this ordinance, "hotel use" shall include all office and other uses accessory to the renting of~~
21 ~~guest rooms, but excluding retail uses and office uses not accessory to the hotel use.~~

22 (5256) "Household." Any person or persons who reside or intend to reside in the same
23 housing unit.

24 (5357) "Household of lower income." A household composed of one or more persons
25 with a combined annual net income for all adult members which does not exceed the

1 qualifying limit for a lower-income family of a size equivalent to the number of persons
2 residing in such household, as set forth for the County of San Francisco in Title 25 of the
3 California Code of Regulations Section 6932.

4 (5458) "Household of median income." A household composed of one or more persons
5 with a combined annual net income for all adult members which does not exceed the
6 qualifying limit for a median-income family of a size equivalent to the number of persons
7 residing in such household, as set forth for the County of San Francisco in Title 25 of the
8 California Code of Regulations Section 6932.

9 (5559) "Household of moderate income." A household composed of one or more
10 persons with a combined annual net income for all adult members which does not exceed the
11 qualifying limit for a moderate-income family of a size equivalent to the number of persons
12 residing in such household, as set forth for the County of San Francisco in Title 25 of the
13 California Code of Regulations Section 6932.

14 (5660) Housing developer." Any business entity building housing units which receives a
15 payment from a sponsor for use in the construction of the housing units. A housing developer
16 may be (a) the same business entity as the sponsor, (b) an entity in which the sponsor is a
17 partner, joint venturor, or stockholder, or (c) an entity in which the sponsor has no control or
18 ownership.

19 (5761) "Housing project." Any development which has residential units as defined in the
20 Planning Code, including but not limited to dwellings, group housing, independent living units,
21 and other forms of development which are intended to provide long-term housing to
22 individuals and households. "Housing project" shall not include that portion of a development
23 that qualifies as an Institutional Use under the Planning Code. "Housing project" for purposes
24 of this Program shall also include the development of live/work units as defined by Section
25

1 102.13 of this Code. Housing project for purposes of this Program shall mean all phases or
2 elements of a multi-phase or multiple lot residential development.

3 (5862) "Housing unit" or "unit." A dwelling unit as defined in San Francisco Housing
4 Code Section 401.

5 (5963) "Improvements Fund." The fund into which all revenues collected by the City for
6 each Program Area's impact fees are deposited.

7 (6064) "In-Kind Agreement." An agreement acceptable in form and substance to the
8 City Attorney and the Director of Planning, under which the project sponsor agrees to provide a
9 specific set of community improvements, at a specific phase of construction, in lieu of contribution to
10 the relevant Fund. ~~between a project sponsor and the Planning Commission, subject to approval by the~~
11 ~~Planning Commission in its sole discretion, to provide a specific set of community improvements at a~~
12 ~~specific phase of construction in lieu of contribution to the relevant Improvements Fund. The In-Kind~~
13 ~~Agreement shall also mandate a covenant of the project sponsor to reimburse all City agencies for their~~
14 ~~administrative and staff costs in negotiating, drafting, and monitoring compliance with the In-Kind~~
15 ~~Agreement. The City shall also require the project sponsor to provide a letter of credit or other~~
16 ~~instrument acceptable in form and substance to the City Attorney and the Planning Department to~~
17 ~~secure the City's right to receive payment as described in the preceding sentence.~~

18 (6165) "Infrastructure." Open space and recreational facilities; public realms
19 improvements such as pedestrian improvements and streetscape improvements; public transit
20 facilities; and community facilities such as libraries, child care facilities, and community
21 centers.

22 (6266) "In lieu fee." A fee paid by a project sponsor in lieu of complying with a
23 requirement of this Code and that is not a development impact fee governed by the Mitigation
24 Fee Act.

1 (63) "Institutional use" shall mean space within a structure or portion thereof intended or
2 primarily suitable for or accessory to the operation of uses contained in San Francisco Planning Code
3 Section 217 and 890.50, regardless of the zoning district that the use is located in.

4 (64) "Integrated PDR use" shall mean space within a structure or portion thereof intended or
5 primarily suitable for or accessory to the operation of uses defined in San Francisco Planning Code
6 Section 890.49, regardless of the zoning district that the use is located in.

7 ~~(6567)~~ Interim Guidelines" shall mean the Office Housing Production Program Interim
8 Guidelines adopted by the City Planning Commission on January 26, 1982, as amended.

9 ~~(6668)~~ "Licensed Child-care facility." A child-care facility which has been issued a valid
10 license by the California Department of Social Services pursuant to California Health and
11 Safety Code Sections 1596.80-1596.875, 1596.95-1597.09, or 1597.30-1597.61.

12 ~~(6769)~~ "Live/work project." A housing project containing more than one live/work unit.

13 ~~(6870)~~ "Live/work unit" shall be as defined in Section 102.13 of this Code.

14 ~~(6971)~~ "Long term housing." Housing intended for occupancy by a person or persons
15 for 32 consecutive days or longer.

16 ~~(7072)~~ "Low income." For purposes of this Article, up to 80% of median family income
17 for the San Francisco PMSA, as calculated and adjusted by the United States Department of
18 Housing and Urban Development (HUD) on an annual basis, except that as applied to
19 housing-related purposes such as the construction of affordable housing and the provision of
20 rental subsidies with funds from the SOMA Stabilization Fund established in Section 418.7, it
21 shall mean up to 60% of median family income for the San Francisco PMSA, as calculated
22 and adjusted by HUD on an annual basis.

23 ~~(7173)~~ "Management, Information and Professional Services (MIPS). An economic
24 activity category under the TIDF that includes, but is not limited to, office use; medical offices
25 and clinics, as defined in Section 890.114 of this Code; business services, as defined in

1 Section 890.111 of this Code; Integrated PDR, as defined in Section 890.49 of this Code, and
2 Small Enterprise Workspaces, as defined in Section 227(t) of this Code.

3 (7274) "Market and Octavia Community Improvements Fund" The fund into which all
4 fee revenue collected by the City from the Market and Octavia Community Improvements
5 Impact Fee is deposited.

6 (7375) "Market and Octavia Community Improvements Impact Fee." The fee collected
7 by the City to mitigate impacts of new development in the Market and Octavia Program Area,
8 as described in the findings in Section 421.1.

9 (7476) "Market and Octavia Community Improvements Program." The program
10 intended to implement the community improvements identified in the Market and Octavia Area
11 Plan, as articulated in the Market and Octavia Community Improvements Program Document
12 on file with the Clerk of the Board in File No. 071157.)

13 (7577) "Market and Octavia Program Area." The Market and Octavia Plan Area in Map
14 1 (Land Use Plan) of the Market and Octavia Area Plan of the San Francisco General Plan,
15 which includes those districts zoned RTO, NCT, or any neighborhood specific NCT, a few
16 parcels zoned RH-1 or RH-2, and those parcels within the Van Ness and Market Downtown
17 Residential Special Use District (VMDRSUD).

18 (7678) "Market rate housing." Housing constructed in the principal project that is not
19 subject to sales or rental restrictions.

20 (7779) "Maximum annual rent." The maximum rent that a housing developer may
21 charge any tenant occupying an affordable unit for the calendar year. The maximum annual
22 rent shall be 30 percent of the annual income for a lower-income household as set forth in
23 Section 6932 on January 1st of each year for the following household sizes:

- 24 (A) For all one-bedroom units, for a household of two persons;
25 (B) For all two-bedroom units, for a household of three persons;

1 (C) For all three-bedroom units, for a household of four persons;

2 (D) For all four-bedroom units, for a household of five persons.

3 (~~7879~~) "Maximum purchase price." The maximum purchase price that a household of
4 moderate income can afford to pay for an owned unit based on an annual payment for all
5 housing costs of 33 percent of the combined household annual net income, a 10 percent
6 down payment, and available financing, for the following household sizes:

7 (A) For all one-bedroom units, for a household of two persons;

8 (B) For all two-bedroom units, for a household of three persons;

9 (C) For all three-bedroom units, for a household of four persons;

10 (D) For all four-bedroom units, for a household of five persons.

11 (~~7980~~) "Medical and Health Services." An economic activity category under the TIDF
12 that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and
13 217(a) of this Code; animal services, as defined in Section 224(a) and (b) of this Code; and
14 social and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

15 (~~8081~~) "Middle Income Household." A household whose combined annual gross
16 income for all members is between 120 percent and 150 percent of the local median income
17 for the City and County of San Francisco, as calculated by the Mayor's Office of Housing
18 using data from the United States Department of Housing and Urban Development (HUD) and
19 adjusted for household size or, if data from HUD is unavailable, as calculated by the Mayor's
20 Office of Housing using other publicly available and credible data and adjusted for household
21 size.

22 (~~82~~) "~~MOCD.~~" ~~The Mayor's Office of Community Development.~~

23 (~~8183~~) "MOH." The Mayor's Office of Housing, or its successor.

24 (~~8284~~) "MTA." The Municipal Transportation Agency, or its successor.

25 (~~8385~~) "MTA Director." The Director of MTA or his or her designee.

1 (8486) "Municipal Railway; MUNI." The public transit system owned by the City and
2 under the jurisdiction of the MTA.

3 (8587) "Net addition." The total amount of gross floor area defined in Planning Code
4 Section 102.9 ~~contained in to be occupied by~~ a development project, less the gross floor area
5 ~~contained existing~~ in any structure demolished or retained as part of the proposed development
6 project ~~that had been occupied by, or primarily serving, any residential, non-residential, or PDR use~~
7 ~~for five years prior to the Planning Commission or Planning Department approval of a development~~
8 ~~project subject to this Article, or for the life of the structure demolished or retained, whichever is~~
9 ~~shorter.~~

10 (88) ~~"Net addition of occupiable square feet of commercial use." Occupied floor area, as~~
11 ~~defined in Section 102.10 of this Code, to be occupied by or primarily serving, non-residential use~~
12 ~~excluding common areas such as hallways, maintenance facilities and lobbies, less the occupied floor~~
13 ~~area in any structure demolished or rehabilitated as part of the proposed commercial development~~
14 ~~project which occupied floor area was used primarily and continuously for commercial use and was~~
15 ~~not accessory to any use other than residential use for at least five years prior to Planning Department~~
16 ~~approval of a residential development project subject to this Article, or for the life of the structure~~
17 ~~demolished or rehabilitated, whichever is shorter.~~

18 (89) ~~"Net addition of gross square feet of entertainment space." Gross floor area as defined in~~
19 ~~Section 102.9 of this Code to be occupied by, or primarily serving, entertainment use, less the gross~~
20 ~~floor area in any structure demolished or rehabilitated as part of the proposed entertainment~~
21 ~~development project that was used primarily and continuously for entertainment, hotel, office, research~~
22 ~~and development, or retail use and was not accessory to any use other than entertainment, hotel, office,~~
23 ~~research and development, or retail use, for five years prior to Commission approval of an~~
24 ~~entertainment development project subject to this Article, or for the life of the structure demolished or~~
25

1 ~~rehabilitated, whichever is shorter, so long as such space was subject to Section 413.1 et seq. of this~~
2 ~~Article or the Interim Guidelines.~~

3 (90) ~~"Net addition of gross square feet of hotel space." Gross floor area as defined in Section~~
4 ~~102.9 of this Code to be occupied by, or primarily serving, hotel use, less the gross floor area in any~~
5 ~~structure demolished or rehabilitated as part of the proposed hotel development project space used~~
6 ~~primarily and continuously for office or hotel use and not accessory to any use other than office or~~
7 ~~hotel use for five years prior to Commission approval of a hotel development project subject to this~~
8 ~~Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

9 (91) ~~"Net addition of gross square feet of non-residential space." Gross floor area as defined~~
10 ~~in Section 102.9 of this Code to be occupied by, or primarily serving, any non-residential use, less the~~
11 ~~gross floor area in any structure demolished or rehabilitated as part of the proposed development~~
12 ~~project space used primarily and continuously for the same non-residential use within the same~~
13 ~~economic activity category. This space shall be accessory to any use other than that same non-~~
14 ~~residential use for five years prior to Commission approval of a development project subject to this~~
15 ~~Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

16 (92) ~~"Net addition of gross square feet of residential space." Gross floor area as defined in~~
17 ~~Section 102.9 of this Code to be occupied by, or primarily serving, residential use, less the gross floor~~
18 ~~area in any structure demolished or rehabilitated as part of the proposed residential development~~
19 ~~project space used primarily and continuously for residential use and not accessory to any use other~~
20 ~~than residential use for five years prior to Planning Commission approval of a development project,~~
21 ~~subject to this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

22 (93) ~~"Net addition of gross square feet of office space." Gross floor area as defined in~~
23 ~~Planning Code Section 102.9 to be occupied by, or primarily serving, office use, less the gross floor~~
24 ~~area in any structure demolished or rehabilitated as part of the proposed office development project~~
25 ~~space used primarily and continuously for office or hotel use and not accessory to any use other than~~

1 ~~office or hotel use for five years prior to Planning Commission approval of an office development~~
2 ~~project subject to this Article, or for the life of the structure demolished or rehabilitated, whichever is~~
3 ~~shorter.~~

4 ~~(94) "Net addition of gross square feet of research and development space." Gross floor area~~
5 ~~as defined in Section 102.9 of this Code to be occupied by, or primarily serving, research and~~
6 ~~development use, less the gross floor area in any structure demolished or rehabilitated as part of the~~
7 ~~proposed research and development project that was used primarily and continuously for~~
8 ~~entertainment, hotel, office, research and development, or retail use and was not accessory to any use~~
9 ~~other than entertainment, hotel, office, research and development, or retail use, for five years prior to~~
10 ~~Commission approval of a research and development project subject to this Article, or for the life of the~~
11 ~~structure demolished or rehabilitated, whichever is shorter.~~

12 ~~(95) "Net addition of gross square feet of retail space." Gross floor area as defined in Section~~
13 ~~102.9 of this Code to be occupied by, or primarily serving, retail use, less the gross floor area in any~~
14 ~~structure demolished or rehabilitated as part of the proposed retail development project that was used~~
15 ~~primarily and continuously for entertainment, hotel, office, research and development, or retail use and~~
16 ~~was not accessory to any use other than entertainment, hotel, office, research and development, or~~
17 ~~retail use, for five years prior to Planning Commission approval of a retail development project subject~~
18 ~~to this Article, or for the life of the structure demolished or rehabilitated, whichever is shorter.~~

19 (8696) "New development." Under the TIDF, any new construction, or addition to or
20 conversion of an existing structure under a building or site permit issued on or after
21 September 4, 2004 that results in 3,000 gross square feet or more of a use covered by the
22 TIDF. In the case of mixed use development that includes residential development, the term
23 "new development" shall refer to only the non-residential portion of such development.
24 "Existing structure" shall include a structure for which a sponsor already paid a fee under the
25 prior TIDF ordinance, as well as a structure for which no TIDF was paid.

1 (8797) "Nonprofit child-care provider." A child-care provider that is an organization
2 organized and operated for nonprofit purposes within the provisions of California Revenue
3 and Taxation Code Sections 23701--23710, inclusive, as demonstrated by a written
4 determination from the California Franchise Tax Board exempting the organization from taxes
5 under Revenue and Taxation Code Section 23701.

6 (8898) "Nonprofit organization." An organization organized and operated for nonprofit
7 purposes within the provisions of California Revenue and Taxation Code Sections 23701--
8 23710, inclusive, as demonstrated by a written determination from the California Franchise
9 Tax Board exempting the organization from taxes under Revenue and Taxation Code Section
10 23701.

11 ~~(99) "Non Residential development project." Any new construction, addition, extension,~~
12 ~~conversion or enlargement, or combination thereof, of an existing structure that includes any occupied~~
13 ~~floor area of a non-residential use; provided, however, that for projects that solely comprise an~~
14 ~~addition to an existing structure that would add occupied floor area in an amount less than 20 percent~~
15 ~~of the occupied floor area of the existing structure, the provisions of this Article shall only apply to the~~
16 ~~new occupied square footage.~~

17 ~~(100) "Non Residential space subject to the Balboa Park Impact Fee." Each net addition of~~
18 ~~gross square feet within the Project Area that contributes to a 20 percent increase in commercial~~
19 ~~capacity of an existing structure.~~

20 ~~(101) "Non-residential Space Subject to the Eastern Neighborhoods Infrastructure Impact~~
21 ~~Fee. Each net addition of net square feet within the Eastern Neighborhoods Project Area which~~
22 ~~contributes to a 20 percent increase in non-residential capacity of an existing structure.~~

23 (89102) "Non-residential use." Space within aAny structure or portion thereof intended or
24 primarily suitable for or accessory to occupancy by retail, office, commercial, or other non-
25 residential uses defined in Section 209.3, 209.8, 217, 218, 219, and 221 of this Code.

1 regardless of the zoning district that the use is located in, and 221; except that residential
2 components of uses defined in Section 209.3(a)-(c) and (g)-(i) shall be defined as a
3 "residential use" for purposes of this Article. For the purposes of this Article, non-residential
4 use shall not include PDR and publicly owned and operated community facilities.

5 (90103) "Notice of Special Restrictions." A document recorded with the San Francisco
6 Recorder's Office for any unit subject to this Program detailing the sale and resale or rental
7 restrictions and any restrictions on purchaser or tenant income levels included as a Condition
8 of Approval of the principal project relating to the unit.

9 (104) ~~"Office development project." Any new construction, addition, extension, conversion or~~
10 ~~enlargement, or combination thereof, of an existing structure which includes any gross floor area of~~
11 ~~office use~~

12 (91105) "Office use." Space within a structure or portion thereof intended or primarily
13 suitable for or accessory to the operation of uses defined in San Francisco Planning Code Section
14 890.70, regardless of the zoning district that the use is located in, occupancy by persons or entities
15 ~~which perform, provide for their own benefit, or provide to others at that location services including,~~
16 ~~but not limited to, the following: Professional; banking; insurance; management; consulting; technical;~~
17 ~~sales; and design; and the non-accessory office functions of manufacturing and warehousing~~
18 ~~businesses; all uses encompassed within the definition of "office" in Section 219 of this Code;~~
19 ~~multimedia, software, development, web design, electronic commerce, and information technology; all~~
20 ~~uses encompassed within the definition of "administrative services" in Section 890.106 of this Code;~~
21 ~~and all "professional services" as proscribed in Section 890.108 of this Code excepting only those uses~~
22 ~~which are limited to the Chinatown Mixed Use District.~~

23 (92106) "Off-site unit." A unit affordable to qualifying households constructed pursuant
24 to this Ordinance on a site other than the site of the principal project.

1 (93107) "On-site unit." A unit affordable to qualifying households constructed pursuant
2 to this Article on the site of the principal project.

3 (94108) "Owned unit." A unit affordable to qualifying households which is a
4 condominium, stock cooperative, community apartment, or detached single-family home. The
5 owner or owners of an owned unit must occupy the unit as their primary residence.

6 (95109) "Owner." The record owner of the fee or a vendee in possession.

7 (96110) "PDR use." Space within any structure or portion thereof intended or primarily
8 suitable for or accessory to the operation of uses defined in San Francisco Planning Code~~Those uses~~
9 ~~contained in Sections 220, 222, 223, 224, 225, and 226, 227(a), 227(b), and 227(p), regardless of~~
10 the zoning district that the use is located in of this Code.

11 (97111) "Principal project." A housing development on which a requirement to provide
12 affordable housing units is imposed.

13 (98112) "Principal site." The total site proposed for development, including the portion
14 of site proposed to be legally transferred to the City and County of San Francisco.

15 (99113) "Procedures Manual." The City and County of San Francisco Affordable
16 Housing Monitoring Procedures Manual issued by the San Francisco Department of City
17 Planning, as amended.

18 (100114) "Rent" or "rental." The total charges for rent, utilities, and related housing
19 services to each household occupying an affordable unit.

20 (101115) "Rental unit." A unit affordable to qualifying households which is not a
21 condominium, stock cooperative, or community apartment.

22 (102116) "Replacement of use." The total amount of gross floor area, as defined in
23 Section 102.9 of this Code, to be demolished and reconstructed by a development project,
24 ~~provided that the demolished had been occupied by any residential, non-residential, or PDR use for~~
25

1 ~~five years prior to Planning Commission or Planning Department approval of the development project~~
2 ~~subject to this Article or for the life of the structure demolished or retained, whichever is shorter.~~

3 ~~(117) "Research and Development ("R&D") project." Any new construction, addition,~~
4 ~~extension, conversion, or enlargement, or combination thereof, of an existing structure which includes~~
5 ~~any gross square feet of R&D use.~~

6 ~~(103118) "Research and development use." Space within any structure or portion~~
7 ~~thereof intended or primarily suitable for or accessory to the operation of uses defined in San~~
8 ~~Francisco Planning Code Section 890.52, regardless of the zoning district that the use is located~~
9 ~~in basic and applied research or systematic use of research knowledge for the production of materials,~~
10 ~~devices, systems, information or methods, including design, development and improvement of products~~
11 ~~and processing, including biotechnology, which involves the integration of natural and engineering~~
12 ~~sciences and advanced biological techniques using organisms, cells, and parts thereof for products and~~
13 ~~services, excluding laboratories which are defined as light manufacturing uses consistent with Section~~
14 ~~226 of this Code.~~

15 ~~(119) "Residential Space Subject to the Balboa Park Impact Fee." Each net addition of gross~~
16 ~~square feet within the Balboa Park Project Area which results in a net new residential unit.~~

17 ~~(120) "Residential Space Subject to the Eastern Neighborhoods Infrastructure Impact Fee."~~
18 ~~Each net addition of net square feet within the Eastern Neighborhoods Project Area which results in a~~
19 ~~net new residential unit.~~

20 ~~(121) "Residential Space Subject to the Market and Octavia Community Infrastructure Impact~~
21 ~~Fee." Each net addition of occupiable square feet within the Market and Octavia Program Area which~~
22 ~~results in an additional residential unit or contributes to a 20 percent increase of residential space~~
23 ~~from the time that this ordinance is adopted within the Market and Octavia Community Improvements~~
24 ~~Fund.~~

1 (104122) "Residential use." *Space within a*Any structure or portion thereof intended *or*
2 *primarily suitable for or accessory to* occupancy by uses defined in *San Francisco Planning Code*
3 Sections 209.1, 790.88, and 890.88 of this Code, as relevant for the subject zoning district, or
4 containing group housing as defined in Section 209.2(a)-(c) of this Code and any residential
5 components of institutional uses as defined in Section 209.3(a)-(c) and (g)-(i) of this Code.

6 ~~(123) "Retail development project." Any new construction, addition, extension, conversion, or~~
7 ~~enlargement, or combination thereof, of an existing structure which includes any gross square feet of~~
8 ~~retail use.~~

9 (105124) "Retail/entertainment." An economic activity category under the TIDF that
10 includes, but is not limited to, a retail use; an entertainment use; massage establishments, as
11 defined in Section 218.1 of this Code; laundering, and cleaning and pressing, as defined in
12 Section 220 of this Code.

13 (106125) "Retail use." Space within any structure or portion thereof intended or
14 primarily suitable for *or accessory to the operation of uses contained in San Francisco Planning Code*
15 *Section 218, regardless of the zoning district that the use is located in. occupancy by persons or entities*
16 *which supply commodities to customers on the premises including, but not limited to, stores, shops,*
17 *restaurants, bars, eating and drinking businesses, and the uses defined in Sections 218 and 220 through*
18 *225 of this Code, and also including all space accessory to such retail use.*

19 (107126) "Revenue services hours." The number of hours that the Municipal Railway
20 provides service to the public with its entire fleet of buses, light rail (including streetcars), and
21 cable cars.

22 (108127) "Rincon Hill Community Improvements Fund." The fund into which all fee
23 revenue collected by the City from the Rincon Hill Community Infrastructure Impact Fee is
24 deposited.

1 (~~109128~~) "Rincon Hill Community Infrastructure Impact Fee." The fee collected by the
2 City to mitigate impacts of new development in the Rincon Hill Program Area, as described in
3 the findings in Section 418.1.

4 (~~110129~~) "Rincon Hill Program Area." Those districts identified as the Rincon Hill
5 Downtown Residential (RH DTR) Districts in the Planning Code and on the Zoning Maps.

6 (~~111130~~) "Section 6932." Section 6932 of Title 25 of the California Code of Regulations
7 as such section applies to the County of San Francisco.

8 (~~112~~) "Small Enterprise Workspace use" shall mean space within a structure or portion
9 thereof intended or primarily suitable for or accessory to the operation of uses as defined in San
10 Francisco Planning Code Section 227(t), regardless of the zoning district that the use is located in.

11 (~~11375~~) "SOMA." The area bounded by Market Street to the north, Embarcadero to the
12 east, King Street to the south, and South Van Ness and Division to the west.

13 (~~114131~~) "SOMA Community Stabilization Fee." The fee collected by the City to
14 mitigate impacts on the residents and businesses of SOMA of new development in the Rincon
15 Hill Program Area, as described in the findings in Section 418.1.

16 (~~115132~~) "SOMA Community Stabilization Fund." The fund into which all fee revenue
17 collected by the City from the SOMA Community Stabilization Fee is deposited.

18 (~~116133~~) "Sponsor" or "project sponsor." An applicant seeking approval for
19 construction of a development project subject to this Article, such applicant's successor and
20 assigns, and/or any entity which controls or is under common control with such applicant.

21 (~~117134~~) "Stock cooperative." As defined in California Business and Professions Code
22 Section 11003.2.

23 (~~118135~~) "Student housing." A building where 100 percent of the residential uses are
24 affiliated with and operated by an accredited post-secondary educational institution. Typically,
25 student housing is for rent, not for sale. This housing shall provide lodging or both meals and

1 lodging, by prearrangement for one week or more at a time. This definition only applies in the
2 Eastern Neighborhoods Mixed Use Districts.

3 (~~119138~~) "TIDF: Transit Impact Development Fee; ~~TIDF~~." The development fee that is
4 the subject of ~~Section~~ Section 411.1 et seq. of this Article.

5 (~~120136~~) "TIDF Study." The study commissioned by the San Francisco Planning
6 Department and performed by Nelson/Nygaard Associates entitled "Transit Impact
7 Development Fee Analysis – Final Report," dated May 2001, including all the Technical
8 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained
9 in Board of Supervisors File No. 040141.

10 (~~121137~~) "Total developable site area." That part of the site that can be feasibly
11 developed as residential development, excluding land already substantially developed, parks,
12 required open spaces, streets, alleys, walkways or other public infrastructure.

13 (~~122139~~) "Treasurer." The Treasurer for the City and County of San Francisco.

14 (~~123140~~) "Trip generation rate." The total number of automobile and Municipal Railway
15 trips generated for each 1,000 square feet of development in a particular economic activity
16 category as established in the TIDF Study, or pursuant to the five-year review process
17 established in Section 411.5 of this Article.

18 (~~124141~~) "Use." The purpose for which land or a structure, or both, are legally
19 designed, constructed, arranged, or intended, or for which they are legally occupied or
20 maintained, let or leased.

21 (~~125142~~) "Visitacion Valley." The area bounded by Carter Street and McLaren Park to
22 the west, Mansell Street to the north, Route 101 between Mansell Street and Bayshore
23 Boulevard to the northeast, Bayview Park to the north, Candlestick Park and Candlestick
24 Point Recreation Area to the east, the San Francisco Bay to the southeast, and the San
25 Francisco County line to the south.

1 (126143) "Visitor services." An economic activity category under the TIDF that includes,
2 but is not limited to, hotel use; motel use, as defined in Section 216(c) and (d); and time-share
3 projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

4 (127144) "Waiver Agreement." An agreement acceptable in form and substance to the
5 City Attorney and the Planning Department under which the City agrees to waive all or a
6 portion of the Community Improvements Impact Fee.

7 **SEC. 413.3. APPLICATION.**

8 (a) ~~Where an environmental evaluation application for the development project is filed on~~
9 ~~or after January 1, 1999, With the exception of uses listed below in subsection (b),~~ Section 413.1 et
10 seq. shall apply to any development project the following:

11 (1) That increases by 25,000 or more gross square feet the total amount of any combination of
12 the following uses: entertainment, hotel, Integrated PDR, office, research and development, retail, and/or
13 Small Enterprise Workspace, and

14 (2) Whose environmental evaluation application for the development project was filed on or
15 after January 1, 1999.

16 (1) ~~Any entertainment development project proposing the net addition of 25,000 or more~~
17 ~~square feet of entertainment space;~~

18 (2) ~~Any hotel development project proposing the net addition of 25,000 or more square feet~~
19 ~~of hotel space;~~

20 (3) ~~Any office development project proposing the net addition of 25,000 or more square feet~~
21 ~~of office space;~~

22 (4) ~~Any research and development project proposing the net addition of 25,000 or more~~
23 ~~square feet of research and development space; and~~

24 (5) ~~Any retail development project proposing the net addition of 25,000 or more square feet~~
25 ~~of retail space, except as provided by Subsection (b)(8) below.~~

1 (b) Section 413.1 et seq. shall not apply to:

2 (1) Any development project other than a development project described in
3 Subsection (a) of this Section, including those portions of a development project consisting of
4 the net addition of square feet of any type of space not described in Subsection (a) of this
5 Section;

6 (2) Those portions of a development project described in Subsection (a) of this
7 Section located on property owned by the United States or any of its agencies or leased by
8 the United States or any of its agencies for a period in excess of 50 years, with the exception
9 of such property not used exclusively for a governmental purpose;

10 (3) Those portions of a development project described in Subsection (a) of this
11 Section located on property owned by the State of California or any of its agencies, with the
12 exception of such property not used exclusively for a governmental or educational purpose;

13 (4) Those portions of a development project described in Subsection (a) of this
14 Section located on property under the jurisdiction of the San Francisco Redevelopment
15 Agency or the Port of San Francisco where the application of Section 413.1 et seq. is
16 prohibited by California or local law;

17 (5) Any office development project approved by the Commission prior to August 18,
18 1985 that was not subject to the Interim Guidelines; or

19 (6) Any office development project approved by the Commission prior to August 18,
20 1985 that was subject to the Interim Guidelines. If the action of the Commission affecting such
21 office development project is thereafter modified, superseded, vacated, or reversed by the
22 Board of Appeals, the Board of Supervisors, or by court action in a manner affecting the
23 amount of housing required under the Interim Guidelines, the permit application on remand to
24 the Commission shall remain subject to the Interim Guidelines.
25

1 (7) Any major phase or development project in Mission Bay North or South to the
2 extent application of Section 413.1 et seq. would be inconsistent with the Mission Bay North
3 Redevelopment Plan and Interagency Cooperation Agreement or the Mission Bay South
4 Redevelopment Plan and Interagency Cooperation Agreement, as applicable.

5 (8) Any of the following free-standing uses. For purposes of this Section, the term "free-
6 standing" shall mean an independent building or structure used exclusively by a single use and any
7 accessory uses, and that is not part of a larger development project on the same environmental
8 evaluation application.

9 (A) free-standing retail use, encompassed in the definition of "pharmacy" as
10 proscribed in Section 790.48(b) of this Code and which does not exceed more than 50,000
11 square feet of retail or other space; or

12 (B) any free-standing retail use encompassed in the definition of "general grocery"
13 proscribed in Section 790.102(a) of this Code, and which does not exceed more than 75,000
14 square feet of retail or other space; or

15 (C) any mixed-use space consisting of residential space and pharmacy retail space
16 not exceeding 50,000 square feet, or general grocery retail space not exceeding 75,000
17 square feet. ~~For purposes of this Section, the term "free-standing" shall mean an independent~~
18 ~~building or structure used exclusively by a single use and any accessory uses, and that is not part of a~~
19 ~~larger development project on the same environmental evaluation application.~~

20 **SEC. 413.5. COMPLIANCE BY PAYMENT TO HOUSING DEVELOPER.**

21 (a) With the written approval of the Director of MOH, the project sponsor may ~~If the~~
22 ~~sponsor~~ elects to pay a sum or contribute land of value at least equivalent to the in-lieu fee to
23 one or more housing developers to meet the requirements of Section 413.1 et seq. If the
24 sponsor elects this option and the Director of MOH approves it, the housing developer or
25 developers shall be required to construct at least the number of housing units determined by

1 the following formulas for each type of space proposed as part of the development project and
 2 subject to Section 413.1 et seq.:

3		
4	Net Addition Gross Sq. Ft.	$\times .000140 = \text{Housing Units}$
5	Entertainment Space	
6	Net Addition Gross Sq. Ft.	$\times .000110 = \text{Housing Units}$
7	Hotel Space	
8	Net Addition Gross Sq. Ft.	$\times .000270 = \text{Housing Units}$
9	Office Space	
10	Net Addition Gross Sq. Ft.	$\times .000200 = \text{Housing Units}$
11	R&D Space	
12	Net Addition Gross sq. Ft.	$\times .000140 = \text{Housing Units}$
13	Retail Space	
14		

15
 16 The housing units required to be constructed under the above formula must be
 17 affordable to qualifying households continuously for 50 years. If the sponsor elects to
 18 contribute to more than one distinct housing development under this Section, the sponsor
 19 shall not receive credit for its monetary contribution to any one development in excess of the
 20 amount of the in-lieu fee, as adjusted under Section 413.6, multiplied by the number of units in
 21 such housing development.

22 (b) Prior to the issuance by DBI of the first site or building permit for a development
 23 project subject to Section 413.1 et seq. the sponsor shall submit to the Department, with a
 24 copy to MOH:

1 (1) A written housing development plan identifying the housing project or projects to
2 receive funds or land from the sponsor and the proposed mechanism for enforcing the
3 requirement that the housing units constructed will be affordable to qualifying households for
4 50 years; and

5 (2) A certification that the sponsor has made a binding commitment to contribute an
6 amount of money or land of value at least equivalent to the amount of the in-lieu fee that
7 would otherwise be required under Section 413.6 to one or more housing developers and that
8 the housing developer or developers shall use such funds or lands to develop the housing
9 subject to this Section.

10 (3) A self-contained appraisal report as defined by the Uniform Standards of
11 Professional Appraisal Practice prepared by an M.A.I. appraiser of the fair market value of any
12 land to be contributed by the sponsor to a housing developer. The date of value of the
13 appraisal shall be the date on which the sponsor submits the housing development plan and
14 certification to the Department.

15 If the sponsor fails to comply with these requirements within one year of the final
16 determination or revised final determination, it shall be deemed to have elected to pay the in-
17 lieu fee under Section 413.6, and any deferral surcharge, in order to comply with Section
18 413.1 et seq. In the event that the sponsor fails to pay the in-lieu fee within the time required
19 by Section 413.6, DBI shall deny any and all site or building permits or certificates of
20 occupancy for the development project until the such payment has been made or land
21 contributed, and the Development Fee Collection Unit at DBI shall immediately initiate lien
22 proceedings against the sponsor's property pursuant to Section 408 of this Article and Section
23 107A.13 of the San Francisco Building Code to recover the fee.

24 (c) Within 30 days after the sponsor has submitted a written housing development
25 project plan and, if necessary, an appraisal to the Department and MOH under Subsection(b)

1 of this Section, the Department shall notify the sponsor in writing of its initial determination as
2 to whether the plan and appraisal are in compliance with this Section, publish the initial
3 determination in the next Commission calendar, and cause a public notice to be published in
4 an official newspaper of general circulation stating that such housing development plan has
5 been received and stating the Department's initial determination. In making the initial
6 determination for an application where the sponsor elects to contribute land to a housing
7 developer, the Department shall consult with the Director of Property and include within its
8 initial determination a finding as to the fair market value of the land proposed for contribution
9 to a housing developer. Within 10 days after such written notification and published notice, the
10 sponsor or any other person may request a hearing before the Commission to contest such
11 initial determination. If the Department receives no request for a hearing within such 10-day
12 period, the determination of the Department shall become a final determination. Upon receipt
13 of any timely request for hearing, the Department shall schedule a hearing before the
14 Commission within 30 days. The scope of the hearing shall be limited to the compliance of the
15 housing development plan and appraisal with this Section, and shall not include a challenge to
16 the amount of the housing requirement imposed on the development project by the
17 Department or the Commission. At the hearing, the Commission may either make such
18 revisions to the Department's initial determination as it may deem just, or confirm the
19 Department's initial determination. The Commission's determination shall then become a final
20 determination, and the Department shall provide written notice of the final determination to the
21 sponsor, MOH, and to any person who timely requested a hearing of the Department's
22 determination. The Department shall also provide written notice to MOH that the housing units
23 to be constructed pursuant to such plan are subject to Section 413.1 et seq..

24 (d) Prior to the issuance by DBI of the first construction document for a
25 development project subject to this Section, the sponsor must:

1 (1) Provide written evidence to the Department that it has paid in full the sum or
2 transferred title of the land required by Subsection (a) of this Section to one or more housing
3 developers;

4 (2) Notify the Department that construction of the housing units has commenced,
5 evidenced by:

6 (A) The City's issuance of site and building permits for the entire housing
7 development project,

8 (B) Written authorization from the housing developer and the construction lender
9 that construction may proceed,

10 (C) An executed construction contract between the housing developer and a general
11 contractor, and

12 (D) The issuance of a performance bond enforceable by the construction lender for
13 100 percent of the replacement cost of the housing project; and

14 (3) Provide evidence satisfactory to the Department that the units required to be
15 constructed will be affordable to qualifying households for 50 years through an enforcement
16 mechanism approved by the Department pursuant to Subsections (b) through (d) of this
17 Section.

18 (e) Where the sponsor elects to pay a sum or contribute land of value equivalent to
19 the in-lieu fee to one or more housing developers, the sponsor's responsibility for completing
20 construction of and maintaining the affordability of housing units constructed ceases from and
21 after the date on which:

22 (1) The conditions of (1) through (3) of Subsection (d) of this Section have been
23 met; and
24
25

1 (2) A mechanism has been approved by the Director to enforce the requirement that
2 the housing units constructed will be affordable to qualifying households continuously for 50
3 years.

4 (g) If the project sponsor fails to comply with these requirements prior to issuance of
5 the first certificate of occupancy by DBI, it shall be deemed to have elected to pay the in-lieu
6 fee under Section 413.6 and the deferral surcharge in order to comply with Section 413.1 et
7 seq. DBI shall deny any and all certificates of occupancy for the development project until
8 such payment has been made.

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

10 (a) ~~(1) Commencing on January 1, 2002, the amount of the fee which may be paid by the~~
11 ~~sponsor of a development project subject to Section 413.1 et seq. in lieu of developing and providing~~
12 ~~the housing required by Section 413.5 shall be determined by the following formulas for each type of~~
13 ~~space proposed as part of the development project and subject to Section 413.1 et seq.:~~

14

Net Addition Gross Sq. Ft. Entertainment Space	x x	\$13.95 = Total Fee
Net Addition Gross Sq. Ft. Hotel Space	x x	\$11.21 = Total Fee
Net Addition Gross Sq. Ft. Office Space	x x	\$14.96 = Total Fee
Net Addition Gross Sq. Ft. R & D Space	x x	\$9.97 = Total Fee
Net Addition Gross Sq. Ft. Retail Space	x x	\$13.95 = Total Fee

21 (2) ~~Commencing on January 1, 2009, the amount of the fee which may be paid by the sponsor of a~~
22 ~~development project subject to Section 413.1 et seq. in lieu of developing and providing the housing~~
23 ~~required by Section 413.5 shall be determined by the following formulas for each type of space~~
24 ~~proposed as part of the development project and subject to Section 413.1 et seq.:~~

Net Addition Gross Sq. Ft. IPDR or S.E.W. Space—	× x	\$15.69 = Total Fee—
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(A) ~~Integrated PDR or IPDR, is defined in Section 890.49 of this Code,~~

(B) ~~Small Enterprise Workspaces or S.E.W., is defined in Section 227(t) of this Code.~~

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

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

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

TABLE 413.6A

FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET

TABLE INSET:

<u>Use</u>	<u>Fee per Gross Square Foot</u>
<u>Entertainment</u>	<u>\$18.62</u>
<u>Hotel</u>	<u>\$14.95</u>
<u>Integrated PDR</u>	<u>\$15.69</u>
<u>Institutional</u>	<u>\$0.00</u>
<u>Office</u>	<u>\$19.96</u>
<u>PDR</u>	<u>\$0.00</u>
<u>Research & Development</u>	<u>\$13.30</u>
<u>Residential</u>	<u>\$0.00</u>
<u>Retail</u>	<u>\$18.62</u>

<u>Small Enterprise Workspace</u>	<u>\$15.69</u>
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TABLE 413.6B

FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE

TABLE INSET:

<u>Previous Use</u>	<u>New Use</u>	<u>Fee per Gross Square Foot</u>
<u>Entertainment, Hotel,</u> <u>Integrated PDR, Office,</u> <u>Research & Development,</u> <u>Retail, or Small Enterprise</u> <u>Workspace</u>	<u>Entertainment, Hotel,</u> <u>Integrated PDR, Office,</u> <u>Retail, or Small</u> <u>Enterprise Workspace</u>	<u>\$0.00</u>
<u>PDR which received its First</u> <u>Certificate of Occupancy on or</u> <u>before April 1, 2010</u>	<u>Entertainment, Hotel,</u> <u>Integrated PDR, Office,</u> <u>Research & Development,</u> <u>Retail, or Small</u> <u>Enterprise Workspace</u>	<u>Use Fee from Table</u> <u>413.6A313.6A minus</u> <u>\$14.09</u>
<u>Institutional which received its</u> <u>First Certificate of Occupancy</u> <u>on or before April 1, 2010</u>	<u>Entertainment, Hotel,</u> <u>Integrated PDR, Office,</u> <u>Research & Development,</u> <u>Retail, or Small</u> <u>Enterprise Workspace</u>	<u>\$0.00</u>
<u>Institutional or PDR which</u> <u>received its First Certificate of</u> <u>Occupancy on or before April</u> <u>1, 2010</u>	<u>Institutional, PDR,</u> <u>Research & Development,</u> <u>Residential</u>	<u>\$0.00</u>
<u>Institutional or PDR which</u>	<u>Any</u>	<u>Use Fee from Table</u>

<p>1 <u>received its First Certificate of</u> 2 <u>Occupancy after April 1, 2010</u></p>		<p><u>413.6A313.6A</u></p>
<p>3 <u>Residential</u></p>	<p>4 <u>Entertainment, Hotel,</u> 5 <u>Integrated PDR, Office,</u> 6 <u>PDR, Research &</u> 7 <u>Development, Retail, or</u> 8 <u>Small Enterprise</u> <u>Workspace</u></p>	<p><u>Use Fee from Table</u> <u>413.6A313.6A</u></p>

9 (b) No later than July 1 of each year, MOH shall adjust the in-lieu fee payment
10 option and provide a report on its adjustment to the Board of Supervisors. MOH shall provide
11 notice of any fee adjustment on its website at least 30 days prior to the adjustment taking
12 effect. MOH is authorized to develop an appropriate methodology for indexing the fee, based
13 on adjustments in the costs of constructing housing and in the price of housing in San
14 Francisco consistent with the indexing for the Residential Inclusionary Affordable Housing
15 Program in lieu fee set out in Section 415.6. The method of indexing shall be published in the
16 Procedures Manual for the Residential Inclusionary Affordable Housing Program. In making a
17 determination as to the amount of the fee to be paid, the Department shall credit to the
18 sponsor any excess Interim Guideline credits or excess credits which the sponsor elects to
19 apply against its housing requirement.

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

1 **SEC. 413.8. COMPLIANCE BY COMBINATION OF PAYMENT TO HOUSING**
2 **DEVELOPER AND PAYMENT OF IN-LIEU FEE.**

3 With the written approval of the Director of MOH, the ~~The~~ sponsor of a development project
4 subject to Section 413.1 et seq. may elect to satisfy its housing requirement by a combination
5 of paying money or contributing land to one or more housing developers under Section 413.5
6 and paying a partial amount of the in-lieu fee to the Development Fee Collection Unit at DBI
7 under Section 413.6. In the case of such election, the sponsor must pay a sum such that each
8 gross square foot of net addition of each type of space subject to Section 413.1 et seq. is
9 accounted for in either the payment of a sum or contribution of land to one or more housing
10 developers or the payment of a fee to the Development Fee Collection Unit. The housing units
11 constructed by a housing developer must conform to all requirements of Section 413.1 et
12 seq., including, but not limited to, the proportion that must be affordable to qualifying
13 households as set forth in Section 413.5. All of the requirements of Sections 413.5 and 413.6
14 shall apply, including the requirements with respect to the timing of issuance of site and
15 building permits and certificates of occupancy for the development project and payment of the
16 in-lieu fee.

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

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

20 (a) Amount of fee: All development projects that have not received Department or
21 Commission approval as of the effective date of May 30, 2008 and that are subject to the
22 Residential Inclusionary Affordable Housing Program shall pay an additional affordable
23 housing fee per the Fee Schedule in Table 416.3A:

24 TABLE 416.3A

AFFORDABLE HOUSING FEE SCHEDULE IN THE MARKET AND OCTAVIA

PROGRAM AREA

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

square-foot of Residential Space Subject to the Community Improvements Impact Fee as follows; \$8.00 in the Van Ness Market Special Use District; \$4.00 in the NCT District; and \$0.00 in the RTO District.

(b) Other Fee Provisions. This additional affordable housing fee shall be subject to the inflation adjustment provisions of Section 409 and the waiver and reduction provisions of Section 421.4. This additional affordable housing fee may not be met through the in-kind provision of community improvements or Community Facilities (Mello Roos) financing options of Sections 426.3(e) and (f).

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

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

12 **SEC. 418 (formerly Section 318). RINCON HILL COMMUNITY IMPROVEMENTS**
13 **FUND AND SOMA COMMUNITY STABILIZATION FUND ~~IN DTR DISTRICTS.~~**

14 Sections 418.1 through 418.7, hereafter referred to as Section 418.1 et seq., set forth
15 the requirements and procedures for the Rincon Hill Community Improvements Fund and the
16 SOMA Community Stabilization Fund. The effective date of these requirements is either
17 August 19, 2005, which is the date that the requirements originally became effective, or the
18 date a subsequent modification, if any, became effective.

19 **SEC. 418.2. DEFINITIONS. See Section 401 of this Article.**

20 **SEC. 418.3. APPLICATION.**

21 (a) Application. Section 418.1 et seq. shall apply to any development project located
22 in the Rincon Hill Community Improvements Program Area

23 ~~(b) Amount of Fees.~~

1 (1) ~~The Rincon Hill Community Infrastructure Impact Fee shall be \$11.00 per net addition~~
2 ~~of occupiable square feet of residential use in any development project with a residential use in any~~
3 ~~development project with a residential use located within the Program Area; and~~

4 **(b) Projects subject to the Rincon Hill Community Infrastructure Impact Fee. The Rincon**
5 **Hill Community Infrastructure Impact Fee is applicable to any development project in the Rincon Hill**
6 **Program Area which results in:**

- 7 (1) At least one net new residential unit.
8 (2) Additional space in an existing residential unit of more than 800 gross square feet.
9 (3) At least one net new group housing facility or residential care facility.
10 (4) Additional space in an existing group housing or residential care facility of more than
11 800 gross square feet.

12 (c) Fee Calculation for the Rincon Hill Community Infrastructure Impact Fee. For
13 development projects for which the Rincon Hill Community Infrastructure Impact Fee is applicable:

- 14 (1) Any net addition of gross square feet shall pay per the Fee Schedule in Table 418.3A, and
15 (2) Any replacement of gross square feet or change of use shall pay per the Fee Schedule in
16 Table 418.3B.

17 **TABLE 418.3A**

18 **RINCON HILL COMMUNIUTY INFRASTRUCTURE IMPACT FEE SCHEDULE FOR NET**
19 **ADDITIONS OF GROSS SQUARE FEET IN THE RINCON HILL PROGRAM AREA**

20 **TABLE INSET:**

21 <u>Residential</u>
22 <u>\$8.60/gsf</u>

1 TABLE 418.3B

2 RINCON HILL COMMUNIUTY INFRASTRUCTURE IMPACT FEE SCHEDULE FOR
 3 REPLACEMENT OF USE OR CHANGE OF USE IN THE RINCON HILL PROGRAM AREA

4 TABLE INSET:

5 <u>Residential to</u>	6 <u>Non-Residential to</u>	
7 <u>Residential or Non-</u>	8 <u>Residential</u>	
9 <u>residential; Non-</u>		<u>PDR to</u>
10 <u>residential to Non-</u>		<u>Residential</u>
11 <u>residential; or PDR</u>		
12 <u>to Non-Residential</u>		
13 <u>\$0</u>	14 <u>\$5.00/gsf</u>	15 <u>\$6.80/gsf</u>

16 (d2) Projects Subject to and Fee Calculation for the SOMA Community Stabilization Fee:

17 The SOMA Community Stabilization Fee shall be ~~\$10.95~~\$14.00 per net addition of
 18 ~~grossoccupiable~~ square feet of residential use in any development project with a residential use
 19 within the Program Area.

20 ~~The Community Infrastructure Impact Fee shall be revised effective January 1st of the year~~
 21 ~~following the effective date of Section 418.1 et seq. and on January 1st each year thereafter by the~~
 22 ~~percentage increase or decrease in the construction cost of providing these improvements.~~

23 (ee) Option for In-Kind Provision of Community Infrastructure and Fee Credits. *Project*
 24 sponsors may propose to directly provide community improvements to the City. In such a case, the City
 25 may enter into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver for the
Rincon Hill Community Infrastructure Impact Fee from the Planning Commission, subject to the
following rules and requirements:

1 (1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the
2 proposed in-kind improvements meet an identified community need and where they substitute for
3 improvements that could be provided by the Rincon Hill Community Improvements Fund (as described
4 in Section 418.5). The City may reject in-kind improvements if they are not consistent with the priorities
5 identified in the Rincon Hill Area Plan, by the Interagency Plan Implementation Committee (see
6 Section 36 of the Administrative Code), or other prioritization processes related to Rincon Hill
7 community improvements programming. No physical improvement or provision of space otherwise
8 required by the Planning Code or any other City Code shall be eligible for consideration as part of this
9 In-Kind Improvements Agreement.

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

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

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

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

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

24 (4) Approval Process. The Planning Commission must approve the material terms of an In-Kind
25 Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the

1 agreement as to form and to substance. The Director of Planning is authorized to execute the
2 Agreement on behalf of the City. If the Planning Commission approves the In-Kind Agreement, it shall
3 waive the amount of the Rincon Hill Community Infrastructure Impact Fee by the value of the proposed
4 In-Kind Improvements Agreement as determined by the Director of Planning. No credit shall be made
5 for land value unless ownership of the land is transferred to the City or a permanent public easement is
6 granted, the acceptance of which is at the sole discretion of the City. The maximum value of the In-Kind
7 Improvements Agreement shall not exceed the required Rincon Hill Community Infrastructure Impact
8 Fee.

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

13 ~~The Planning Commission may reduce the Community Infrastructure Impact Fee for specific~~
14 ~~residential development projects in cases where the Director has recommended approval and the~~
15 ~~project sponsor has entered into an In-Kind Improvements Agreement with the City. In-kind community~~
16 ~~improvements may only be accepted if they are improvements prioritized in the Rincon Hill Plan, meet~~
17 ~~identified community needs, and serve as a substitute for improvements funded by impact fee revenue~~
18 ~~such as street improvements, transit improvements, and community facilities. Open space or~~
19 ~~streetscape improvements proposed to satisfy the usable open space requirements of Section 135 are~~
20 ~~not eligible as in-kind improvements. No proposal for in-kind community improvements shall be~~
21 ~~accepted that does not conform to the criteria above. Project sponsors that pursue In-Kind Community~~
22 ~~Agreements with the City will be charged time and materials for any additional administrative costs~~
23 ~~that the Department or any other City agency incurs in processing the request.~~

24 (1) ~~The Rincon Hill Community Infrastructure Impact Fee may be reduced by the total~~
25 ~~dollar value of the community improvements provided through an In-Kind Improvements Agreement~~

1 ~~recommended by the Director and approved by the Commission. For the purposes of calculating the~~
2 ~~total dollar value, the project sponsor shall provide the Department with a cost estimate for the~~
3 ~~proposed in-kind community improvement(s) from two independent sources or, if relevant, real estate~~
4 ~~appraisers. If the City has completed a detailed site specific cost estimate for a planned improvement,~~
5 ~~this may serve as one of the cost estimates provided it is indexed to current cost of construction. Based~~
6 ~~on these estimates, the Director shall determine the appropriate value of the in-kind improvements and~~
7 ~~the Commission shall reduce the Rincon Hill Community Infrastructure Impact Fee otherwise due by~~
8 ~~an equal amount. No credit shall be made for land value unless ownership of the land is transferred to~~
9 ~~the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of~~
10 ~~the City.~~

11 ~~(2) All In Kind Improvement Agreements shall require the project sponsor to reimburse all~~
12 ~~City agencies for their administrative and staff costs in negotiating, drafting, and monitoring~~
13 ~~compliance with the In Kind Improvements Agreement.~~

14 ~~(f^d) Option for Financing of In-Kind Community Improvements or payment of the~~
15 ~~Rincon Hill Community Infrastructure Impact Fee via a Mello-Roos Community Facilities~~
16 ~~District ("CFD").~~

17 Applicants may finance In-Kind Community Improvements (subject to subsection (f) above) or
18 payment of the Rincon Hill Community Infrastructure Impact Fee (subject to subsection (c)
19 above) through the formation of a CFD. ~~Applicants who do so shall be responsible for any~~
20 ~~additional time and materials costs associated with annexation or formation of the CFD,~~
21 ~~including, Planning Department staff, City Attorney time, and other costs associated with~~
22 ~~annexation or formation of the CFD. These costs shall be paid in addition to the In-Kind~~
23 ~~Community Improvements obligation and billed no later than expenditure of CFD bond funds~~
24 ~~promptly following satisfaction of the In-Kind Agreement or payment of the Rincon Hill~~
25 ~~Community Infrastructure Impact Fee. In the case of failure by the project sponsor to provide~~

1 Community Facilities Districts funds to the City according to the specified timeline and terms
2 in the agreement, the project sponsor shall be responsible for paying to the City the full Fee
3 described in (e) above plus interest (accrued since the date of first site permit) at a rate not
4 less than that earned by the City's investment pool over such period as calculated by the City
5 Controller.

6 (ge) Timing of Fee Payments. The Rincon Hill Community Infrastructure Impact Fee
7 and SOMA Stabilization Fee is due and payable to the Development Fee Collection Unit at
8 DBI prior to issuance of the first construction document, with an option for the project sponsor
9 to defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay
10 a deferral surcharge that would be paid into the appropriate fund in accordance with Section
11 107A.13.3 of the San Francisco Building Code.

12 (hf) Waiver or Reduction.

13 Development projects may be eligible for a waiver or reduction of impact fees, per Section 406 of this
14 Article. In the event that the Board of Supervisors grants a waiver or reduction under Section
15 406408 of this Article, it shall be the policy of the Board of Supervisors that it shall adjust the
16 percentage of inclusionary housing in lieu fees in Section 827(b)(5)(C) of this Code such that
17 a greater percentage of the in lieu fees will be spent in SOMA with the result that the waiver or
18 reduction under this Section shall not reduce the overall funding to the SOMA community.

19 **SEC. 418.5. RINCON HILL COMMUNITY IMPROVEMENTS FUND.**

20 (a) There is hereby established a separate fund set aside for a special purpose
21 entitled the Rincon Hill Community Improvements Fund ("Fund"). All monies collected by the
22 Development Fee Collection Unit at DBI pursuant to Section 418.3(e) shall be deposited in a
23 special fund maintained by the Controller. The receipts in the Fund are hereby appropriated in
24 accordance with law to be used solely to fund public infrastructure subject to the conditions of
25 this Section.

1 (b) Fund Expenditure.

2 (1) All monies deposited in the Fund shall be used solely to design, engineer,
3 acquire, and develop neighborhood open spaces, streetscape improvements, *public library*
4 *resources and facilities*, a community center, and other improvements that result in new
5 publicly-accessible facilities within the Rincon Hill Downtown Residential (DTR) District or
6 within 250 feet of the District, *except that funds used for "public library resources and facilities"*
7 *may be used to augment services, resources, materials, equipment or facilities at a public library*
8 *outside of the Rincon Hill DTR District or within 250 feet of the District, provided that such library is*
9 *conveniently located such that it will demonstrably serve the increased population of the Rincon Hill*
10 *district*. These improvements shall be consistent with the Rincon Hill Public Open Space
11 System as described in Map 5 of the Rincon Hill Area Plan of the General Plan, and any
12 Rincon Hill Improvements Plan that is approved by the Board of Supervisors in the future,
13 except that monies from the Fund may be used by the Planning Commission to commission
14 economic analyses for the purpose of revising the fee pursuant to Section 418.3 above, to
15 complete a nexus study to demonstrate the relationship between residential development and
16 the need for public facilities if this is deemed necessary, or to commission landscape
17 architectural or other planning, design and engineering services in support of the proposed
18 public improvements, provided they do not exceed a total of ~~\$500,000~~\$250,000.

19 (2) Notwithstanding Subsection (b)(1) above, \$6 million of the Fund shall be
20 transferred to the SOMA Stabilization Fund described in Section 418.7 to be used exclusively
21 for the following expenditures: SOMA Open Space Facilities Development and Improvement;
22 Community Facilities Development and Improvement; SOMA Pedestrian Safety Planning,
23 Traffic Calming, and Streetscape Improvement; and Development of new affordable housing
24 in SOMA. The Board of Supervisors finds that it is in the best interest of the City that the
25 Rincon Hill Community Improvements be built. The Board of Supervisors further finds that the

1 City will be able to build sufficient community improvements for the Rincon Hill Plan Area with
2 the remainder of the money in the Rincon Hill Community Improvements Fund. In the event
3 that the Department demonstrates to the Board that the City is unable to build the
4 contemplated community improvements for the Plan Area, it shall be City policy to designate
5 funds from the general fund received from real estate transfer taxes and property taxes on
6 new development generated under the Rincon Hill Plan Area Plan approved in this ordinance
7 sufficient to finance the rest of the community improvements proposed for the Rincon Hill Plan
8 Area.

9 (3) No portion of the Fund may be used, by way of loan or otherwise, to pay any
10 administrative, general overhead, or similar expense of any public entity, except for the purposes
11 of administering this fund. Administration of this fund includes maintenance of the Fund, time and
12 materials associated with processing and approving fee payments and expenditures from the Fund
13 (including necessary hearings), reporting or informational requests related to the Fund, and
14 coordination between public agencies regarding determining and evaluating appropriate expenditures
15 of the Fund, but shall not include design, engineering, real estate, or planning activities related to
16 projects using Fund expenditures. Expenditures related to administration of the fund shall not exceed
17 4% of the aggregate value of fee payments subject to Section 418.3318-3, including any in-kind
18 agreements. All interest earned on this account shall be credited to the Rincon Hill Community
19 Improvements Fund.

20 (c) The Controller's Office shall file an annual report with the Board of Supervisors
21 beginning one year after the effective date of Section 418.1 et seq., which report shall set
22 forth the amount of money collected in the Fund. The Fund shall be administered by the
23 Planning Commission.

24 (d) A public hearing shall be held by both the Planning and Recreation and Parks
25 Commissions to elicit public comment on proposals for the acquisition of property using

1 monies in the Fund or through agreements for financing In-Kind Community Improvements via
2 a Mello-Roos Community Facilities District that will ultimately be maintained by the
3 Department of Recreation and Parks. Notice of public hearings shall be published in an official
4 newspaper at least 20 days prior to the date of the hearing, which notice shall set forth the
5 time, place, and purpose of the hearing. The hearing may be continued to a later date by a
6 majority vote of the members of both Commissions present at the hearing. At a joint public
7 hearing, a quorum of the Planning and Recreation and Parks Commissions may vote to
8 allocate the monies in the Fund for acquisition of property for park use and/or for development
9 of property for park use, or to approve projects proposed in connection with an agreement for
10 In-Kind or CFD Improvements.

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

17 (f) The Director shall have the authority to prescribe rules and regulations
18 governing the Fund, which are consistent with Section 418.1 et seq..

19 **SEC. 418.6. DIRECTOR OF PLANNING'S EVALUATION.**

20 Within 18 months following the effective date of Section 418.1 et seq., the Director of
21 Planning and the Director of MOHMOCD shall report to the Planning Commission, the Board
22 of Supervisors, and the Mayor on the status of compliance with Section 418.1 et seq., the
23 efficacy of Section 418.1 et seq. in funding infrastructure and stabilization programs in the
24 Rincon Hill Program Area and in SoMa, and the impact of the Program on property values in
25 the vicinity of the Program Project Area.

1 **SEC. 418.7. STUDIES.**

2 (a) No later than July 1, 2010, and every five years thereafter, the Director of
3 Planning shall complete a study to determine the demand for infrastructure to serve
4 residential development projects in the Rincon Hill Downtown Residential District ~~downtown~~
5 ~~residential areas~~ and, based on the study, recommend to the Board of Supervisors changes in
6 the requirements for the Rincon Hill Community Infrastructure Impact Fee ~~community improvement~~
7 ~~impact fees~~ imposed on residential development in Section 418.1 et seq. if necessary to help
8 meet that demand.

9 (b) No later than July 1, 2010, and every five years thereafter, the Director of
10 MOHMOCD or his or her designee shall complete a study to determine the demand for
11 stabilization programs in the SOMA area and, based on the study, recommend to the Board of
12 Supervisors changes in the requirements for the SOMA Community Stabilization Fee ~~Rincon Hill~~
13 ~~community stabilization impact fees~~ imposed on residential development in Section 418.1 et seq.
14 if necessary to help meet that demand.

15 **SEC. 421.1. FINDINGS.**

16 A. Market and Octavia Plan Objectives. The Market and Octavia Area Plan
17 embodies the community's vision of a better neighborhood, which achieves multiple objectives
18 including creating a healthy, vibrant transit-oriented neighborhood. The Planning Department
19 coordinated development of the Area Plan objectives around the tenants of the Better
20 Neighborhood Planning process and within the larger framework of the General Plan.

21 The Market and Octavia Plan Area encompasses a variety of districts, most of which
22 are primarily residential or neighborhood commercial. The Area Plan calls for a maintenance
23 of the well-established neighborhood character in these districts with a shift to a more transit-
24 oriented type of districts. A transit-oriented district, be it neighborhood commercial or
25 residential in character, generates a unique type of infrastructure needs.

1 The overall objective of the Market and Octavia planning effort is to encourage
2 balanced growth in a centrally located section of the City that is ideal for transit oriented
3 development. The Area Plan calls for an increase in housing and retail capacity simultaneous
4 to infrastructure improvements in an effort to maintain and strengthen neighborhood
5 character.

6 B. Need for New Housing and Retail. New residential construction in San Francisco
7 is necessary to accommodate a growing population. The population of California has grown
8 by more than 11 percent since 1990 and is expected to continue increasing. The San
9 Francisco Bay Area is growing at a rate similar to the rest of the state.

10 The City should encourage new housing production in a manner that enhances existing
11 neighborhoods and creates new high-density residential and mixed-use neighborhoods. One
12 solution to the housing crisis is to encourage the construction of higher density housing in
13 areas of the City best able to accommodate such housing. Areas like the Plan Area can better
14 accommodate growth because of easy access to public transit, proximity to downtown,
15 convenience of neighborhood shops to meet daily needs, and the availability of development
16 opportunity sites. San Francisco's land constraints, as described in Section 418.1(A), limit
17 new housing construction to areas of the City not previously designated as residential areas,
18 infill sites, or areas that can absorb increased density.

19 The Market and Octavia Plan Area presents opportunity for infill development on
20 various sites, including parcels along Octavia Boulevard known as "the Central Freeway
21 parcels," some parcels along Market Street, and the SoMa West portions of the Plan Area.
22 These sites are compelling opportunities because new housing can be built within easy
23 walking distance of the downtown and Civic Center employment centers and City and regional
24 transit centers, while maintaining the comfortable residential character and reinforcing the
25 unique and exciting neighborhood qualities.

1 To respond to the identified need for housing, repair the fabric of the neighborhood,
2 and support transit-oriented development, the Market and Octavia Plan Area is zoned for the
3 appropriate residential and *commercial non-residential* uses. The Planning Department is
4 adding a Van Ness Market Downtown Residential Special Use District (VNMDR-SUD) in the
5 Plan Area and establishing a Residential Transit-oriented (RTO) district and several
6 Neighborhood Commercial Transit (NCT) districts. New zoning controls encourage housing
7 and *commercial non-residential* development appropriate to each district.

8 The plan builds on existing neighborhood character and establishes new standards for
9 amenities necessary for a transit-oriented neighborhood. A transit-oriented neighborhood
10 requires a full range of neighborhood serving businesses. New retail and office space will
11 provide both neighborhood- and City-serving businesses.

12 San Francisco is experiencing a severe shortage of housing available to people at all
13 income levels, especially to those with the lowest incomes while seeing a sharp increase in
14 housing prices. The Association of Bay Area Governments' (ABAG) Regional Housing Needs
15 Determination (RHND) forecasts that San Francisco must produce 2,716 new units of housing
16 annually to meet projected needs. At least 5,639 of these new units should be available to
17 moderate income households. New affordable units are funded through a variety of sources,
18 including inclusionary housing and in lieu fees leveraged by new market rate residential
19 development pursuant to Sections 413 and 415. The Planning Department projects that
20 approximately 1,400 new units of affordable housing will be developed as a result of the plan.
21 New ~~D~~development ~~R~~requires new ~~C~~community ~~I~~nfrastructure.

22 The purpose for new development in the Plan Area is established above (Section
23 421.1(A)). New construction should not diminish the City's open space, jeopardize the City's
24 Transit First Policy, or place undue burden on the City's service systems. The new residential
25 and non-residential construction should preserve the existing neighborhood services and

1 character, as well as increase the level of service for all modes necessary to support transit-
2 oriented development. New development in the area will create additional impact on the local
3 infrastructure, thus generating a substantial need for community improvements as the
4 district's population and workforce grows.

5 The amendments to the General Plan, Planning Code, and Zoning Maps that
6 correspond to Section 421.1 et seq. will permit an increased amount of new residential and
7 *commercial non-residential* development. The Planning Department anticipates an increase of
8 5,960 units within the next 20 years, and an increase of 9,875 residents, as published in the
9 environmental impact report. This new development will have an extraordinary impact on the
10 Plan Area's infrastructure. As described more fully in the Market and Octavia Plan Final
11 Environmental Impact Report, on file with the Clerk of the Board in File No. 071157, and the
12 Market and Octavia Community Improvements Program Document, San Francisco Planning
13 Department on file with the Clerk of the Board in File No. 071157, new development will
14 generate substantial new pedestrian, vehicle, bicycle, and transit trips which will impact the
15 area. The transition to a new type of district is tantamount to the development of new
16 subdivisions, or the transition of a district type, in terms of the need for new infrastructure.

17 The Market and Octavia Area Plan proposes to mitigate these impacts by providing
18 extensive pedestrian, transit, traffic-calming and other streetscape improvements that will
19 encourage residents to make as many daily trips as possible on foot, by bicycle or on transit;
20 by creating new open space, greening, and recreational facilities that will provide necessary
21 public spaces; and by establishing a range of other services and programming that will meet
22 the needs of community members. A comprehensive program of new public infrastructure is
23 necessary to lessen the impacts of the proposed new development and to provide the basic
24 community improvements to the area's new community members. The Market and Octavia
25

1 Community Improvements Program Document provides a more detailed description of
2 proposed ~~C~~community Improvements.

3 In order to enable San Francisco to provide necessary public services to new
4 residents; to maintain and improve the Market and Octavia Plan Area character; and to
5 increase neighborhood livability and investment in the district, it is necessary to upgrade
6 existing streets and streetscaping; acquire and develop neighborhood parks, recreation
7 facilities and other community facilities to serve the new residents and workers.

8 While the open space requirements imposed on individual developments address
9 minimum needs for private open space and access to light and air, such open space does not
10 provide the necessary public social and recreational opportunities as attractive public facilities
11 such as sidewalks, parks and other community facilities that are essential urban infrastructure,
12 nor does it contribute to the overall transformation of the district into a safe and enjoyable
13 transit-oriented neighborhood.

14 C. Program Scope. The purpose of the proposed Market and Octavia Community
15 *Infrastructure Improvements* Impact Fees is to provide specific public improvements, including
16 community open spaces, pedestrian and streetscape improvements and other facilities and
17 services. These improvements are described in the Market and Octavia Area Plan and
18 Neighborhood Plan and the accompanying ordinances, and are necessary to meet
19 established City standards for the provision of such facilities. The Market and Octavia
20 Community Improvements Fund and Community *Infrastructure Improvements* Impact Fee will
21 create the necessary financial mechanism to fund these improvements in proportion to the
22 need generated by new development.

23 National and international transportation studies (such as the Dutch Pedestrian Safety
24 Research Review. T. Hummel, SWOV Institute for Road Safety Research (Holland), and
25 University of North Carolina Highway Safety Research Center for the U.S. Department of

1 Transportation, 1999 on file with the Clerk of the Board have demonstrated that pedestrian,
2 traffic-calming and streetscape improvements of the type proposed for the Market and Octavia
3 Plan Area result in safer, more attractive pedestrian conditions. These types of improvements
4 are essential to making pedestrian activity a viable choice, thereby helping to mitigate traffic
5 impacts associated with excess automobile trips that could otherwise be generated by new
6 development.

7 The proposed Market and Octavia Community Infrastructure Improvements Impact Fee is
8 necessary to maintain progress towards relevant state and national service standards, as well
9 as local standards in the Goals and Objectives of the General Plan for open space and
10 streetscape improvements as discussed in Section 418.1(F). Additionally the fee contributes
11 to library resources and childcare facilities standards discussed below:

12 Library Resources: New residents in Plan Area will generate a substantial new need for
13 library services. The San Francisco Public Library does not anticipate adequate demand for a
14 new branch library in the Market and Octavia Plan Area at this time. However, the increase in
15 population in Plan Area will create additional demand at other libraries, primarily the Main
16 Library and the Eureka Valley Branch Library. The Market and Octavia Community
17 Infrastructure Improvements Impact Fee includes funding for library services equal to \$69.00 per
18 new resident, which is consistent with the service standards used by the San Francisco Public
19 Library for allocating resources to neighborhood branch libraries. Child Care Facilities: New
20 households in the Plan Area will generate a need for additional childcare facilities. Childcare
21 services are integral to the financial and social success of families. Nationwide, research and
22 policies are strengthening the link between childcare and residential growth, many Bay Area
23 counties are leading in efforts to finance new childcare through new development. San Mateo
24 has conducted detailed research linking housing to childcare needs. Santa Clara County has
25 developed exemplary projects that provide childcare facilities in proximity to transit stations,

1 and Santa Cruz has levied a fee on residential development to fund childcare. Similarly many
2 research efforts have illustrated that adequate childcare services are crucial in supporting a
3 healthy local economy, see research conducted by Louise Stoney, Mildred Warner, PPIC,
4 County of San Mateo, CA on file with the Clerk of the Board. The Mayor's Office of Community
5 Development's MOCD's Project Connect Report identified childcare as an important community
6 service in neighboring communities. Project connect did not survey the entire Market and
7 Octavia Plan Area, it focused on low income communities, including Market and Octavia's
8 neighbors in the Mission, Western Addition, and the Tenderloin. The Department of Children
9 Youth and Their Families projects new residents of Market and Octavia will generate demand
10 for an additional 435 childcare spaces, of those 287 will be serviced through new child care
11 development centers.

12 D. Programmed Improvements and Costs. Community improvements to mitigate
13 the impact of new development in the Market and Octavia Plan Area were identified through a
14 community planning process, based on proposals in the Market and Octavia Area Plan on file
15 with the Clerk of the Board in File No.071158, and on a standards based analysis, and on
16 community input during the Plan adoption process. The Planning Department developed cost
17 estimates to the extent possible for all proposed improvements. These are summarized by
18 use type in Table 1. Cost projections in Table 1 are realistic estimates made by the Planning
19 Department of the actual costs for improvements needed to support new development. More
20 information on these cost estimates is located in the Market and Octavia Community
21 Improvements Program Document. Cost estimates for some items on Table 1 are to be
22 determined through ongoing analyses conducted in coordination with implementation of the
23 Market and Octavia Plan Community Improvements Program. In many cases these projects
24 require further design work, engineering, and environmental review, which may alter the
25 nature of the improvements; the cost estimates are still reasonable approximates for the

1 eventual cost of providing necessary community improvements to respond to identified
 2 community needs. The Board of Supervisors is not committing to the implementation of any
 3 particular project at this time. Projects may be substituted for like projects should new
 4 information from the Citizens Advisory Committee, the Interagency Plan Implementation
 5 Committee, other stakeholders, or the environmental review process illustrate that substitute
 6 projects should be prioritized. Cost projections will be updated at a minimum approximately
 7 every five years after adoption.

8 Table 1.

9 Cost of proposed community improvements in the Market and Octavia Plan Area.

11 Market and Octavia	
12 Community Improvements	
13 Greening	\$58,310,000
14 Parks	\$6,850,000
15 Park Improvements	\$ TBD
16 Vehicle	\$49,260,000
17 Pedestrian	\$23,760,000
18 Transportation	\$81,180,000
19 Transit User	\$ TBD
20 Infrastructure	
21 Bicycle	\$1,580,000
22 Childcare	\$17,170,000
23 Library Materials	\$690,000
24	
25	

1	Recreational	
2	Facilities	\$15,060,000
3	Future Studies	\$460,000
4	Program Administration	\$4,730,000
5	Total	\$258,900,000

7 Provision of affordable housing needs are addressed in Sections 413 and 415 of this
8 Code. Additionally subsidized affordable housing may be granted a waiver from the Market
9 and Octavia Community Improvement Fee as provided for in Section 406 of this Article. This
10 waiver may be leveraged as a local funding 'match' to Federal and State affordable housing
11 subsidies enabling affordable housing developers to capture greater subsidies for projects in
12 the Plan Area.

13 E. Sharing the Burden. As detailed above, new development in the Plan Area will
14 clearly generate new infrastructure demands.

15 To fund such community infrastructure and amenities, new development in the district
16 shall be assessed development impact fees proportionate to the increased demand for such
17 infrastructure and amenities. The City will use the proceeds of the fee to build new
18 infrastructure and enhance existing infrastructure, as described in preceding sections. A
19 Community Infrastructure Impact Fee shall be established for the Van Ness and Market
20 Downtown Residential Special Use District (VNMDR-SUD), and the Neighborhood
21 Commercial Transit (NCT) and Residential Transit Oriented (RTO) Districts as set forth
22 herein.

23 Many counties, cities and towns have one standardized impact fee schedule that
24 covers the entire municipality. Although this type of impact fee structure works well for some
25 types of infrastructure, such as affordable housing and basic transportation needs, it cannot

1 account for the specific improvements needed in a neighborhood to accommodate specific
2 growth. A localized impact fee gives currency to the community planning process and
3 encourages a strong nexus between development and infrastructure improvements.

4 Development impact fees are an effective approach to achieve neighborhood
5 mitigations and associate the costs with new residents, workers, and a new kind of
6 development. The proposed Market and Octavia Community ~~Infrastructure~~ Improvements
7 Impact Fee would be dedicated to infrastructure improvements in the Plan Area, directing
8 benefits of the fund clearly to those who pay into the fund, by providing necessary
9 infrastructure improvements, needed to serve new development. The net increases in
10 individual property values in these areas due to the enhanced neighborhood amenities
11 financed with the proceeds of the fee are expected to exceed the payments of fees by project
12 sponsors.

13 The fee rate has been calculated by the Planning Department based on accepted
14 professional methods for the calculation of such fees. The Market and Octavia Community
15 Improvements Program Document contains a full discussion of impact fee calculation. Cost
16 estimates are based on an assessment of the potential cost to the City of providing the
17 specific improvements described in the Market and Octavia Plan Area. The Planning
18 Department assigned a weighted value to new construction based on projected population
19 increases in relation to the total population.

20 The proposed fee would cover less than 80% of the estimated costs of the community
21 improvements calculated as necessary to mitigate the impacts of new development. By
22 charging developers less than the maximum amount of the justified impact fee, the City avoids
23 any need to refund money to developers if the fees collected exceed costs. The proposed
24 fees only cover impacts caused by new development and are not intended to remedy existing
25 deficiencies; those costs will be paid for by public, community, and other private sources.

1 The Full implementation of the Market and Octavia community improvements program
2 relies on public, private, and community capital. Since 2000, when the Market and Octavia
3 planning process was initiated, the area has seen upwards of \$100 million in public
4 investment, including the development of Octavia Boulevard, the new Central freeway ramp,
5 Patricia's Green in Hayes Valley and related projects. Additionally private entities have
6 invested in the area by improving private property and creating new commercial
7 establishments. Community members have invested by creating a Community Benefits
8 District in the adjacent Castro neighborhood, organizing design competitions, and lobbying for
9 community programming such as a rotating arts program on Patricia's Green in Hayes Valley.
10 Project sponsor contributions to the Market and Octavia Community Improvements Fund will
11 help leverage additional public and community investment.

12 As a result of ~~the~~ new development, projected to occur over a 20-year period,
13 property tax revenue is projected to increase by as much as \$28 million annually when
14 projected housing production is complete. Sixteen million dollars of this new revenue will be
15 diverted directly to San Francisco (see the Market and Octavia Community Improvements
16 Program Document for a complete discussion of increased property tax revenue). These
17 revenues will fund improvements and expansions to general City services, including police,
18 fire, emergency, and other services needed to partially meet increased demand associated
19 with new development. New development's local impact on community infrastructure will be
20 greater in the Market and Octavia Plan Area, relative to those typically funded by City
21 government through property tax revenues. Increased property taxes will contribute to
22 continued maintenance and service delivery of new infrastructure and amenities. The City
23 should pursue State enabling legislation that directs growth related increases in property tax
24 directly to the neighborhood where growth is happening, similar to the redevelopment
25 agencies' Tax Increment Financing tool. If such a revenue dedication tool does become

1 available, the Planning Department should pursue an ordinance to adopt and apply a tax
2 increment district to the Market and Octavia Plan Area even if the Plan is already adopted by
3 the Board of Supervisors and in effect. The relative cost of capital improvements, along with
4 the reduced role of State and Federal funding sources, increases the necessity for
5 development impact fees to cover these costs. Residential and ~~commercial~~ non-residential
6 impact fees are one of the many revenue sources necessary to mitigate the impacts of new
7 development in the Market and Octavia Plan Area.

8 **SEC. 421.3. APPLICATION OF COMMUNITY IMPROVEMENTSINFRASTRUCTURE**
9 **IMPACT FEE.**

10 (a) Application. Section 421.1 et seq. shall apply to any development project located
11 in the Market and Octavia Infrastructure Program Area, ~~which includes properties identified as~~
12 ~~part of the Market and Octavia Plan Area in Map 1 (Land Use Plan) of the Market and Octavia Area~~
13 ~~Plan of the San Francisco General Plan.~~

14 (b) Projects subject to the Market and Octavia Community Improvement Impact Fee. The
15 Market and Octavia Community Improvements Impact Fee is applicable to any development project in
16 the Market and Octavia Program Area which results in:

17 (1) At least one net new residential unit.

18 (2) Additional space in an existing residential unit of more than 800 gross square feet.

19 (3) At least one net new group housing facility or residential care facility.

20 (4) Additional space in an existing group housing or residential care facility of more than 800
21 gross square feet.

22 (5) New construction of a non-residential use, or

23 (6) Additional non-residential space in excess of 800 gross square feet in an existing structure.

1 (c) Fee Calculation for the Market and Octavia Community Improvement Impact Fee. For
 2 development projects for which the Market and Octavia Community Improvements Impact Fee is
 3 applicable:

4 (1) Any net addition of gross square feet shall pay per the Fee Schedule in Table 421.3A, and

5 (2) Any replacement of gross square feet or change of use shall pay per the Fee Schedule in
 6 Table 421.3B.

7 TABLE 421.3A

8 FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET IN THE MARKET AND
 9 OCTAVIA PROGRAM AREA

10 TABLE INSET:

<u>Residential</u>	<u>Non-residential</u>
<u>\$9.00/gsf</u>	<u>\$3.40/gsf</u>

13 TABLE 421.3B

14 FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE IN THE MARKET
 15 AND OCTAVIA PROGRAM AREA

16 TABLE INSET:

<u>Residential to</u>	<u>Non-Residential to</u>		
<u>Residential or Non-</u>	<u>Residential</u>		<u>PDR to Non-</u>
<u>residential; or Non-</u>		<u>PDR to Residential</u>	<u>Residential</u>
<u>residential to Non-</u>			
<u>residential</u>			
<u>\$0</u>	<u>\$5.60/gsf</u>	<u>\$7.30/gsf</u>	<u>\$1.70/gsf</u>

1 ~~(b) Amount of Market and Octavia Community Infrastructure Impact Fees; Timing of~~
2 ~~Payment. The sponsor shall pay Market and Octavia Community Infrastructure Impact Fees of the~~
3 ~~following amounts:~~

4 ~~(1) Unless a Waiver Agreement has been executed, prior to the issuance by DBI of the first~~
5 ~~construction document for a residential development project, or residential component of a mixed use~~
6 ~~project within the Program Area, a \$10.00 Community Infrastructure Impact Fee in the Market and~~
7 ~~Octavia Plan Area, as described in (a) above, for the Market and Octavia Community Improvements~~
8 ~~Fund, for each net addition of occupiable square feet which results in an additional residential unit or~~
9 ~~contributes to a 20 percent increase of residential space from the time that Section 421.1 et seq. is~~
10 ~~adopted.~~

11 ~~(2) Unless a Waiver Agreement has been executed, prior to the issuance by DBI of the first~~
12 ~~construction document for a non-residential development project, or non-residential component of a~~
13 ~~mixed use project within the Program Area, a \$4.00 Community Improvement Impact Fee in the Market~~
14 ~~and Octavia Plan Area, as described in (a) above, for the Market and Octavia Community~~
15 ~~Improvements Fund for each net addition of occupiable square feet which results in an additional non-~~
16 ~~residential capacity that is beyond 20 percent of the non-residential capacity at the time that Section~~
17 ~~421.1 et seq. is adopted.~~

18 ~~(c) Fee Adjustments.~~

19 ~~(1) Inflation Adjustments. The Controller may make annual adjustments of the development~~
20 ~~fees for inflation in accordance with Section 409 of this Article. The Market and Octavia Community~~
21 ~~Infrastructure Impact Fee adjustments should be based on the following factors: (a) the percentage~~
22 ~~increase or decrease in the cost to acquire real property for public park and open space use in the area~~
23 ~~and (b) the percentage increase or decrease in the construction cost of providing these and other~~
24 ~~improvements listed in Section 421.1(E). Fluctuations in the construction market can be gauged by~~
25 ~~indexes such as the Engineering News Record or a like index. Revision of the fee should be done in~~

1 ~~coordination with revision to other like fees, such as those detailed in Sections 247, 414, 414, 415, 418,~~
2 ~~and 419 of this Code. The Planning Department shall provide notice of any fee adjustment including~~
3 ~~the formula used to calculate the adjustment, on its website and to any interested party who has~~
4 ~~requested such notice at least 30 days prior to the adjustment taking effect.~~

5 ~~(2) — Program Adjustments. Upon Planning Commission and Board approval adjustments~~
6 ~~may be made to the fee to reflect changes to (a) the list of planned community improvements listed in~~
7 ~~Section 421.1(D); (b) re-evaluation of the nexus based on new conditions; or (c) further planning work~~
8 ~~which recommends a change in the scope of the community improvements program. Changes may not~~
9 ~~be made to mitigate temporary market conditions. Notwithstanding the foregoing, it is the intent of the~~
10 ~~Board of Supervisors that it is not committing to the implementation of any particular project at this~~
11 ~~time and changes to, additions, and substitutions of individual projects listed in the related program~~
12 ~~document can be made without adjustment to the fee rate or Section 421.1 et seq. as those individual~~
13 ~~projects are placeholders that require further public deliberation and environmental review.~~

14 ~~(3) — Unless and until an adjustment has been made, the schedule set forth in this Section~~
15 ~~421.1 et seq. shall be deemed to be the current and appropriate schedule of development impact fees.~~

16 (d) Option for In-Kind Provision of Community Improvements Infrastructure and Fee
17 Credits. Project sponsors may propose to directly provide community improvements to the City. In
18 such a case, the City may enter into an In-Kind Improvements Agreement with the sponsor and issue a
19 fee waiver for the Market and Octavia Community Improvements Impact Fee from the Planning
20 Commission, subject to the following rules and requirements:

21 (1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the
22 proposed in-kind improvements meet an identified community need and where they substitute for
23 improvements that could be provided by the Market and Octavia Community Improvements Fund (as
24 described in Section 421.5). The City may reject in-kind improvements if they are not consistent with
25 the priorities identified in the Market and Octavia Area Plan, by the Interagency Plan Implementation

1 Committee (see Section 36 of the Administrative Code), the Market and Octavia Citizens Advisory
2 Committee, or other prioritization processes related to Market and Octavia community improvements
3 programming. No physical improvement or provision of space otherwise required by the Planning
4 Code or any other City Code shall be eligible for consideration as part of this In-Kind Improvements
5 Agreement.

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

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

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

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

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

20 (4) Approval Process. The Planning Commission must approve the material terms of an In-
21 Kind Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the
22 agreement as to form and to substance. The Director of Planning is authorized to execute the
23 Agreement on behalf of the City. If the Planning Commission approves the In-Kind Agreement, it shall
24 waive the amount of the Market and Octavia Community Improvements Impact Fee by the value of the
25 proposed In-Kind Improvements Agreement as determined by the Director of Planning. No credit shall

1 be made for land value unless ownership of the land is transferred to the City or a permanent public
2 easement is granted, the acceptance of which is at the sole discretion of the City. The maximum value
3 of the In-Kind Improvements Agreement shall not exceed the required Market and Octavia Community
4 Improvements Impact Fee.

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

9 ~~The Planning Commission may reduce the Market and Octavia Community Infrastructure~~
10 ~~Impact Fee owed for specific development projects in cases where a project sponsor has entered into~~
11 ~~an In-Kind Agreement with the City to provide In-Kind improvements in the form of streetscaping,~~
12 ~~sidewalk widening, neighborhood open space, community center, and other improvements that result in~~
13 ~~new public infrastructure and facilities described in Section 421.1(E)(a) or similar substitutes. For the~~
14 ~~purposes of calculating the total value of In-Kind community improvements, the project sponsor shall~~
15 ~~provide the Department with a cost estimate for the proposed In-Kind community improvements from~~
16 ~~two independent contractors or, if relevant, real estate appraisers. If the City has completed a detailed~~
17 ~~site specific cost estimate for a planned community improvement this may serve as one of the cost~~
18 ~~estimates, required by this clause; if such an estimate is used it must be indexed to current cost of~~
19 ~~construction. Based on these estimates, the Director shall determine their appropriate value and the~~
20 ~~Commission may reduce the Community Infrastructure Impact Fee assessed to that project~~
21 ~~proportionally. Approved In-Kind improvements should generally respond to priorities of the~~
22 ~~community, or fall within the guidelines of approved procedures for prioritizing projects in the Market~~
23 ~~and Octavia Community Improvements Program. Open space or streetscape improvements, including~~
24 ~~off-site improvements per the provisions of this Special Use District, proposed to satisfy the usable~~
25 ~~open space requirements of Section 135 and 138 of this Code are not eligible for credit toward the~~

1 ~~contribution as In-Kind improvements. No credit toward the contribution may be made for land value~~
2 ~~unless ownership of the land is transferred to the City or a permanent public easement is granted, the~~
3 ~~acceptance of which is at the sole discretion of the City. A permanent easement shall be valued at no~~
4 ~~more than 50% of appraised fee simple land value, and may be valued at a lower percentage as~~
5 ~~determined by the Director of Planning in his or her sole discretion. Any proposal for contribution of~~
6 ~~property for public open space use shall follow the procedures of Subsection (6)(D) below. The~~
7 ~~Commission may reject In-Kind improvements if they do not fit with the priorities identified in the plan,~~
8 ~~by the Interagency Plan Implementation Committee (see Section 36 of the Administrative Code), the~~
9 ~~Market and Octavia Citizens Advisory Committee (Section 341.5) or other prioritization processes~~
10 ~~related to Market and Octavia Community Improvements Programming.~~

11 (e) Option for Financing of Community Improvements or Payment of the Market and
12 Octavia Community Improvements/Infrastructure Impact Fee via a Mello Roos Community
13 Facilities District ("CFD").
14 Applicants may finance In-Kind Community Improvements (subject to subsection (e) above) or
15 payment of the Market and Octavia Community Improvements/Infrastructure Impact Fee (subject
16 to subsection (c) above) through the formation of a CFD. Applicants who do so shall be
17 responsible for any additional time and materials costs associated with annexation or
18 formation of the CFD, including Planning Department staff, City Attorney time, and other costs
19 associated with annexation or formation of the CFD. These costs shall be paid in addition to
20 the In-Kind Community Improvements obligation and billed no later than expenditure of CFD
21 bond funds promptly following satisfaction of the In-Kind Agreement or payment of the Market
22 and Octavia Community Improvements/Infrastructure Impact Fee. In the case of failure by the
23 project sponsor to provide Community Facilities Districts funds to the City according to the
24 specified timeline and terms in the agreement, the project sponsor shall be responsible for
25 paying to the City the full Fee described in (c) above plus interest (accrued since the date of

1 first site permit) at a rate not less than that earned by the City's investment pool over such
2 period as calculated by the City Controller.

3 (f) Timing of Fee Payments. The Market and Octavia Community Improvements Impact Fee
4 is due and payable to the Development Fee Collection Unit at DBI prior to issuance of the first
5 construction document, with an option for the project sponsor to defer payment to prior to issuance of
6 the first certificate of occupancy upon agreeing to pay a deferral surcharge that would be paid into the
7 appropriate fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

8 (g) Waiver or Reduction.

9 Development projects may be eligible for a waiver or reduction of impact fees, per Section 406
10 of this Article. Additionally, Applicants that are subject to the downtown parks fee, Section 139,
11 can reduce their contribution to the Market and Octavia Community Improvements Fund by
12 one dollar for every dollar that they contribute to the downtown parks fund, the total fee waiver
13 or reduction granted through this clause shall not exceed 8.2 percent of calculated
14 contribution for residential development or 13.8 percent for commercial development.

15 **SEC. 421.5. MARKET AND OCTAVIA COMMUNITY IMPROVEMENTS FUND.**

16 (a) There is hereby established a separate fund set aside for a special purpose
17 entitled the Market and Octavia Community Improvements Fund ("Fund"). All monies
18 collected by DBI pursuant to Section 421.3(b) shall be deposited in a special fund maintained
19 by the Controller. The receipts in the Fund to be used solely to fund community improvements
20 subject to the conditions of this Section.

21 (b) The Fund shall be administered by the Board of Supervisors.

22 (1) All monies deposited in the Fund shall be used to design, engineer, acquire, and
23 develop and improve neighborhood open spaces, pedestrian and streetscape improvements,
24 community facilities, childcare facilities, and other improvements that result in new publicly-

1 accessible facilities and related resources within the Market and Octavia Plan Area or within
 2 250 feet of the Plan Area, in accordance with Table 421.5A.

3 Table 421.5A. Breakdown of Market and Octavia Community Improvements Fee by
 4 Infrastructure Type.

<u>Components of Proposed Impact</u> <u>Fee</u>	<u>Residential</u>	<u>Commercial</u>
<u>Greening</u>	<u>34.1%</u>	<u>50.2%</u>
<u>Parks</u>	<u>8.2%</u>	<u>13.8%</u>
<u>Park</u> <u>Improvements</u>	<u>tbd</u>	<u>tbd</u>
<u>Vehicle</u>	<u>0.4%</u>	<u>0.4%</u>
<u>Pedestrian</u>	<u>6.9%</u>	<u>6.2%</u>
<u>Transportation</u>	<u>22.2%</u>	<u>20.1%</u>
<u>Transit User</u> <u>Infrastructure</u>	<u>tbd</u>	<u>tbd</u>
<u>Bicycle</u>	<u>0.5%</u>	<u>0.4%</u>
<u>Childcare</u>	<u>8.3%</u>	<u>0.0%</u>
<u>Library</u> <u>Materials</u>	<u>0.9%</u>	<u>0.0%</u>
<u>Recreational Facilities</u>	<u>13.1%</u>	<u>0.0%</u>
<u>Future Studies</u>	<u>0.2%</u>	<u>4%</u>

<u>Program Administration</u>	<u>5.1%</u>	<u>8.6%</u>
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Funds may be used for childcare facilities that are not publicly owned or "publicly-accessible". Funds generated for 'library resources' should be used for materials at the Main Library, the Eureka Valley Library, or other library facilities that directly service Market and Octavia Residents. Funds may be used for additional studies and fund administration as detailed in the Market and Octavia Community Improvements Program Document. These improvements shall be consistent with the Market and Octavia Civic Streets and Open Space System as described in Map 4 of the Market and Octavia Area Plan of the General Plan, and any Market and Octavia Improvements Plan. Monies from the Fund may be used by the Planning Commission to commission economic analyses for the purpose of revising the fee pursuant to Section 421.3(c) above, to complete an updated nexus study to demonstrate the relationship between development and the need for public facilities if this is deemed necessary.

(2) No portion of the Fund may be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar expense of any public entity, except for the purposes of administering this fund. Administration of this fund includes time and materials associated with reporting requirements, facilitating the Market and Octavia Citizens Advisory Committee meetings, and maintenance of the fund. Total expenses associated with administration of the fund shall not exceed the proportion calculated in Table 2 3 (above). All interest earned on this account shall be credited to the Market and Octavia Community Improvements Fund.

(c) With full participation by the Planning Department and related implementing agencies the Controller's Office shall file an annual report with the Board of Supervisors beginning 180 days after the last day of the fiscal year of the effective date of Section 421.1 et seq., which shall include the following elements: (1) a description of the type of fee in each

1 account or fund; (2) Amount of the fee; (3) Beginning and ending balance of the accounts or
2 funds including any bond funds held by an outside trustee; (4) Amount of fees collected and
3 interest earned; (5) Identification of each public improvement on which fees or bond funds
4 were expended and amount of each expenditure; (6) An identification of the approximate date
5 by which the construction of public improvements will commence; (7) A description of any
6 inter-fund transfer or loan and the public improvement on which the transferred funds will be
7 expended; and (8) Amount of refunds made and any allocations of unexpended fees that are
8 not refunded.

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

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

1 (f) The Director of Planning shall have the authority to prescribe rules and
2 regulations governing the Fund, which are consistent with this Section 421.1 et seq. The
3 Director shall make recommendations to the Board regarding allocation of funds.

4 **SEC. 421.7. TRANSPORTATION STUDIES AND FUTURE FEES.**

5 (a) Purpose. Studies conducted by the City including the Transit Impact
6 Development Fee nexus study, the ongoing Eastern Neighborhoods studies, and others
7 indicate that new residential development and the creation of new *commercial non-residential* or
8 residential parking facilities negatively impact the City's transportation infrastructure and
9 services. The purpose of this Section is to authorize a nexus study establishing the impact of
10 new residential development and new parking facilities, in nature and amount, on the City's
11 transportation infrastructure and parking facilities and, if justified, to impose impact fees on
12 residential development and projects containing parking facilities.

13 (b) Timing. No later than October 15, 2008, the City shall initiate a study as
14 described below. The agencies described in subsection (c) shall develop a comprehensive
15 scope and timeline of this study which will enable the Board of Supervisors to pursue policy
16 recommendations through the legislative process as soon as twelve months after the study's
17 initiation.

18 (c) Process. The study shall be coordinated by the Municipal Transportation Agency
19 (MTA) and the City Attorney's Office. The study shall build on existing Nexus Study work
20 including recently published nexus studies for parks and recreation, childcare facilities, the
21 existing Transit Development Impact Fee Nexus Study, and all relevant area plan nexus
22 analysis. The MTA shall coordinate with all relevant government agencies including the San
23 Francisco County Transportation Authority, the Planning Department, the Mayor's Office of
24 Housing, the Controller's Office, the City Attorney's Office and the City Administrator by
25 creating a task force that meets regularly to discuss the study and resultant policy and

1 program recommendations. The MTA shall hire consultants as deemed appropriate to
2 complete the technical analysis.

3 (d) Scope. The study shall determine the impact, in nature and amount, of new
4 residential development and new parking facilities, including new individual parking spaces,
5 on transportation infrastructure and services within the City and County of San Francisco. The
6 study shall not consider or develop specific transportation infrastructure improvement
7 recommendations. The study shall make policy and/or program a recommendations to the
8 Board of Supervisors on the most appropriate mechanisms for funding new transportation
9 infrastructure and services including but not limited to new residential transit impact fees and
10 new parking impact fees.

11 (e) Springing Condition Projects Subject to Future Fees, Based on the findings of
12 the above-referenced is study the City anticipates that the Board may adopt new impact fees
13 to offset the impact of new parking facilities and residential development on San Francisco's
14 transportation network. As the Market and Octavia Plan Area is one of the first transit oriented
15 neighborhood plans in the City and County of San Francisco the City should strive for a
16 successful coordination of transit oriented development with adequate transportation
17 infrastructure and services. All residential and ~~commercial~~ non-residential development projects
18 in the Market and Octavia Plan Area that receive Planning Department or Commission
19 approval on or after the effective date of this Section shall be subject to any future Citywide or
20 Plan-specific parking impact fees or residential transit impact fees that are established before
21 the project receives a first certificate of occupancy. The Planning Department and Planning
22 Commission shall make payment of any future residential transit impact fee or parking impact
23 fee a condition of approval of all projects in the Market and Octavia Plan Area that receive
24 Planning Department or Commission approval on or after the effective date of this Section,
25 with the following maximum amounts;

1 (1) Parking Impact fee no more than \$5.00 per square foot of floor area dedicated to
2 parking.

3 (2) Transit Impact fee no more than \$9.00 per square foot of residential and
4 ~~commercial~~ non-residential floor area.

5 **SEC. 422.3. APPLICATION OF COMMUNITY IMPROVEMENT IMPACT FEE.**

6 (a) Application. Section 422.1 et seq. shall apply to any development project
7 located in the Balboa Park Community Improvements Program Area, ~~which includes all~~
8 ~~properties identified as part of the Balboa Park Station Area Plan in Figure 1 of the San Francisco~~
9 ~~General Plan.~~

10 (b) Projects subject to the Balboa Park Impact Fee. The Balboa Park Impact Fee is applicable
11 to any development project in the Balboa Park Program Area which results in:

12 (1) At least one net new residential unit,

13 (2) Additional space in an existing residential unit of more than 800 gross square feet,

14 (3) At least one net new group housing facility or residential care facility,

15 (4) Additional space in an existing group housing or residential care facility of more than 800
16 gross square feet,

17 (5) New construction of a non-residential use, or

18 (6) Additional non-residential space in excess of 800 gross square feet in an existing structure.

19 (c) Fee Calculation for the Balboa Park Impact Fee. For development projects for which the
20 Balboa Park Impact Fee is applicable:

21 (1) Any net addition of gross square feet shall pay per the Fee Schedule in Table 422.3A, and

22 (2) Any replacement of gross square feet or change of use shall pay per the Fee Schedule in
23 Table 422.3B.

24
25 TABLE 422.3A

FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET IN THE BALBOA PARK

PROGRAM AREA

TABLE INSET:

<u>Residential</u>	<u>Non-residential</u>
<u>\$8.00/gsf</u>	<u>\$1.50/gsf</u>

TABLE 422.3B

FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE IN THE BALBOA

PARK PROGRAM AREA

TABLE INSET:

<u>Residential to</u>	<u>Non-Residential to</u>		
<u>Residential or Non-</u>	<u>Residential</u>		<u>PDR to Non-</u>
<u>residential; or Non-</u>		<u>PDR to Residential</u>	<u>Residential</u>
<u>residential to Non-</u>			
<u>residential</u>			
<u>\$0</u>	<u>\$6.50/gsf</u>	<u>\$7.25/gsf</u>	<u>\$0.75/gsf</u>

(b) — Amount of Fee.

(1) — Residential Uses: \$8.00 per net addition of gross square feet which results in an additional residential unit or contributes to a 20 percent increase of residential floor area at the time that Section 422.1 et seq. was adopted in any development project with a residential use located within the Program Area; and

(2) — Non-Residential Uses: \$1.50 per net addition of gross square feet which results in an additional non-residential floor area that is beyond 20 percent of the non-residential floor area at the time that Section 422.1 et seq. was adopted in any development project with a non-residential use located within the Program Area.

1 (de) Option for In-Kind Provision of Community Improvements and Fee Credits.

2 Project sponsors may propose to directly provide community improvements to the City. In such a case,
3 the City may enter into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver
4 for the Balboa Park Impact Fee from the Planning Commission, subject to the following rules and
5 requirements:

6 (1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the
7 proposed in-kind improvements meet an identified community need as analyzed in the Balboa Park
8 Community Improvements Program and where they substitute for improvements that could be provided
9 by the Balboa Park Community Improvements Fund (as described in Section 422.5). The City may
10 reject in-kind improvements if they are not consistent with the priorities identified in the Balboa Park
11 Area Plan, by the Interagency Plan Implementation Committee (see Section 36 of the Administrative
12 Code), or other prioritization processes related to Balboa Park community improvements
13 programming. No physical improvement or provision of space otherwise required by the Planning
14 Code or any other City Code shall be eligible for consideration as part of this In-Kind Improvements
15 Agreement.

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

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

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

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

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

6 (4) Approval Process. The Planning Commission must approve the material terms of an In-
7 Kind Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the
8 agreement as to form and to substance. The Director of Planning is authorized to execute the
9 Agreement on behalf of the City. If the Planning Commission approves the In-Kind Agreement, it shall
10 waive the amount of the Balboa Park Impact Fee by the value of the proposed In-Kind Improvements
11 Agreement as determined by the Director of Planning. No credit shall be made for land value unless
12 ownership of the land is transferred to the City or a permanent public easement is granted, the
13 acceptance of which is at the sole discretion of the City. The maximum value of the In-Kind
14 Improvements Agreement shall not exceed the required Balboa Park Impact Fee.

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

19 ~~The Commission may reduce the Balboa Park Community Improvements Impact Fee owed for~~
20 ~~specific development projects in cases where the Director has recommended approval and the project~~
21 ~~sponsor has entered into an In-Kind Improvements Agreement with the City. In-kind improvements may~~
22 ~~be accepted if they are prioritized in the Plan, meet identified community needs as analyzed in the~~
23 ~~Balboa Park Community Improvements Program, and serve as a substitute for improvements funded by~~
24 ~~impact fee revenue such as street improvements, transit improvements, and community facilities. Open~~
25 ~~space or streetscape improvements proposed to satisfy the usable open space requirements of Section~~

1 ~~135 are not eligible as in-kind improvements. No proposal for In-kind improvements shall be accepted~~
2 ~~that does not conform to the criteria above. Project sponsors that pursue In-kind Improvements~~
3 ~~Agreements with the City will be charged time and materials for any additional administrative costs~~
4 ~~that the Department or any other City agency incurs in processing the request.~~

5 (1) ~~The Balboa Park Community Impact Fee may be reduced by the total dollar value of the~~
6 ~~community improvements provided through an In-kind Improvements Agreement recommended by the~~
7 ~~Director and approved by the Commission. For the purposes of calculating the total value, the project~~
8 ~~sponsor shall provide the Department with a cost estimate for the proposed in-kind improvement(s)~~
9 ~~from two independent sources or, if relevant, real estate appraisers. If the City has completed a~~
10 ~~detailed site-specific cost estimate for a planned improvement this may serve as one of the cost~~
11 ~~estimates provided it is indexed to current cost of construction. Based on these estimates, the Director~~
12 ~~shall determine the appropriate value of the in-kind improvements and the Commission shall reduce the~~
13 ~~Balboa Park Community Improvements Impact Fee otherwise due by an equal amount shall be made~~
14 ~~for land value unless ownership of the land is transferred to the City or a permanent public easement is~~
15 ~~granted, the acceptance of which is at the sole discretion of the City.~~

16 (2) ~~All In-Kind Improvements Agreements shall require the project sponsor to reimburse all~~
17 ~~City agencies for their administrative and staff costs in negotiating, drafting, and monitoring~~
18 ~~compliance with the In-Kind Improvements Agreement. The City also shall require the project sponsor~~
19 ~~to provide a letter of credit or other instrument, acceptable in form and substance to the Department~~
20 ~~and the City Attorney, to secure the City's right to receive improvements as described above.~~

21 (d) ~~The Department or Commission shall impose a condition on the approval of application~~
22 ~~for a development project subject to Section 422.1 et seq. The project sponsor shall supply all~~
23 ~~information to the Department or the Commission necessary to make a determination as to the~~
24 ~~applicability of Section 422.1 et seq. and imposition of the requirements.~~

1 ~~(ed)~~ Timing of Fee and Payments of Fee. The Balboa Park Impact Fee ~~fee~~ required by this
2 Section is due and payable to the Development Fee Collection Unit at DBI prior to issuance of
3 the first construction document for the development project deferred to prior to issuance of the
4 first certificate of occupancy pursuant to Section 107A.13.3.1 of the San Francisco Building
5 Code.

6 (f) Waiver or Reduction. Development projects may be eligible for a waiver or reduction of
7 impact fees, per Section 406 of this Article.

8 **SEC. 423.2. DEFINITIONS.**

9 (a) In addition to the definitions set forth in Section 401 of this Article, the following
10 definitions shall govern interpretation of Section 423.1 et seq.

11 (1). Tier 1.

12 (A) All development on sites which received a height increase of eight feet or less, or received a
13 reduction in height, as part of the Eastern Neighborhoods Plan (on file with the Clerk of the Board of
14 Supervisors in File No. 081154);

15 (B) The residential portion of all 100% affordable housing projects;

16 (C) The residential portion of all projects within the Urban Mixed Use (UMU) district; and

17 (D) All changes of use within existing structures.

18 (2). Tier 2. All additions to existing structures or new construction on other sites not listed in
19 subsection (1) above which received a height increase of nine to 28 feet as part of the Eastern
20 Neighborhoods Plan (on file with the Clerk of the Board of Supervisors in File No. 081154);

21 (3). Tier 3. All additions to existing structures or new construction on other sites not listed in
22 subsection (1) above which received a height increase of 29 feet or more as part of the Eastern
23 Neighborhoods Plan (on file with the Clerk of the Board of Supervisors in File No. 081154).

1 For purposes of this Section, increase in heights in the MUR District shall be measured by the
2 base height (as defined in Section 263.11) prior to the effective date of the Eastern Neighborhoods
3 (Ordinance #298-08).

4 ~~(1) "Tier 1." Sites which do not receive zoning changes that increase heights, as compared~~
5 ~~to allowable height prior to the rezoning (May 2008), all 100% affordable housing projects, and all~~
6 ~~housing projects within the Urban Mixed Use (UMU) district.~~

7 ~~(2) "Tier 2." Sites which receive zoning changes that increase heights by one to two stories.~~

8 ~~(3) "Tier 3." Sites which receive zoning changes that increase heights by three or more~~
9 ~~stories and in the Mixed Use Residential District.~~

10 **SEC. 423.3. APPLICATION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE**
11 **IMPACT FEE.**

12 (a) Application. Section 423.1 et seq. shall apply to any development project
13 located in the Eastern Neighborhoods ~~Public Benefits~~ Program Area, ~~which includes properties~~
14 ~~identified as part of the Eastern Neighborhoods Plan Areas in Map I (Land Use Plan) of the San~~
15 ~~Francisco General Plan.~~

16 (b) Projects subject to the Eastern Neighborhoods Infrastructure Impact Fee. The Eastern
17 Neighborhoods Infrastructure Impact Fee is applicable to any development project in the Eastern
18 Neighborhoods Program Area which results in:

19 (1) At least one net new residential unit,

20 (2) Additional space in an existing residential unit of more than 800 gross square feet,

21 (3) At least one net new group housing facility or residential care facility,

22 (4) Additional space in an existing group housing or residential care facility of more than
23 800 gross square feet,

24 (5) New construction of a non-residential use, or
25

1 (6) Additional non-residential space in excess of 800 gross square feet in an existing
 2 structure.

3 (c) Fee Calculation for the Eastern Neighborhoods Infrastructure Impact Fee. For
 4 development projects for which the Eastern Neighborhoods Infrastructure Impact Fee is applicable:

5 (1) Any net addition of gross square feet shall pay per the Fee Schedule in Table 423.3A,
 6 and

7 (2) Any replacement of gross square feet or change of use shall pay per the Fee Schedule in
 8 Table 423.3B.

9 TABLE 423.3A

10 FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET IN THE EASTERN
 11 NEIGHBORHOODS PROGRAM PLAN AREAS

12 TABLE INSET:

<u>Tier (per Sec. 423.3(a))</u>	<u>Residential</u>	<u>Non-residential</u>
<u>1</u>	<u>\$8/gsf</u>	<u>\$6/gsf</u>
<u>2</u>	<u>\$12/gsf</u>	<u>\$10/gsf</u>
<u>3</u>	<u>\$16/gsf</u>	<u>\$14/gsf</u>

13 TABLE 423.3B

14 FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE IN THE EASTERN
 15 NEIGHBORHOODS PROGRAM AREA

16 TABLE INSET:

<u>Tier (per Sec. 422.3(a))</u>	<u>Residential to Residential or Non-residential; or Non-residential</u>	<u>Non-Residential to residential</u>	<u>PDR to Residential</u>	<u>PDR to Non-residential</u>

	<u>residential to Non-residential</u>			
1				
2				
3	<u>1</u>	<u>\$0</u>	<u>\$2/gsf</u>	<u>\$5/gsf</u>
4	<u>2</u>	<u>\$0</u>	<u>\$2/gsf</u>	<u>\$9/gsf</u>
5	<u>3</u>	<u>\$0</u>	<u>\$2/gsf</u>	<u>\$13/gsf</u>
6				

(b) — Amount of Fee.

(1) — Residential Uses. The fees set forth in Table 423.3 below shall be charged on net additions of gross square feet which result in a net new residential unit, contribute to a 20 percent increase of non-residential space in an existing structure, or create non-residential space in a new structure.

(2) — Non-Residential Uses. The fees set forth in Table 423.3 below shall be charged on non-residential use within each use category of Cultural/Institution/Education; Management, Information & Professional Service; Medical & Health Service; Retail/Entertainment; and Visitor Services; with no substitutions across uses. Fees shall not be required for uses contained in Sections 220, 222, 223, 224, 225, and 226 of this Code.

(3) — Mixed Use Projects. Fees shall be assessed on mixed use projects according to the gross square feet of each residential and non-residential use in the project.

TABLE 423.3

FEE SCHEDULE FOR EASTERN NEIGHBORHOODS PLAN AREAS

<u>Tier</u>	<u>Residential</u>	<u>Non-residential*</u>
<u>1</u>	<u>\$8/gsf</u>	<u>\$6/gsf</u>

2—	\$12/gsf	\$10/gsf
3—	\$16/gsf	\$14/gsf

(de) Option for In-Kind Provision of Community Improvements and Fee Credits.

Project sponsors may propose to directly provide community improvements to the City. In such a case, the City may enter into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver for the Eastern Neighborhoods Infrastructure Impact Fee from the Planning Commission, subject to the following rules and requirements:

(1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the proposed in-kind improvements meet an identified community need as analyzed in the Eastern Neighborhoods Community Improvements Program and where they substitute for improvements that could be provided by the Eastern Neighborhoods Community Improvements Fund (as described in Section 423.5). The City may reject in-kind improvements if they are not consistent with the priorities identified in the Eastern Neighborhoods Area Plans (Central Waterfront, East SoMa, Mission, and Showplace Square/Potrero Hill), by the Interagency Plan Implementation Committee (see Section 36 of the Administrative Code), the Eastern Neighborhoods Citizens Advisory Committee, or other prioritization processes related to Eastern Neighborhoods Citizens community improvements programming. No physical improvement or provision of space otherwise required by the Planning Code or any other City Code shall be eligible for consideration as part of this In-Kind Improvements Agreement.

(2) Valuation. The Director of Planning shall determine the appropriate value of the proposed in-kind improvements. For the purposes of calculating the total value, the project sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind improvement(s) from two independent sources or, if relevant, real estate appraisers. If the City has completed a

1 detailed site-specific cost estimate for a planned improvement this may serve as one of the cost
2 estimates provided it is indexed to current cost of construction.

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

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

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

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

11 (4) Approval Process. The Planning Commission must approve the material terms of an In-
12 Kind Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the
13 agreement as to form and to substance. The Director of Planning is authorized to execute the
14 Agreement on behalf of the City. If the Planning Commission approves the In-Kind Agreement, it shall
15 wave the amount of the Eastern Neighborhoods Infrastructure Impact Fee by the value of the proposed
16 In-Kind Improvements Agreement as determined by the Director of Planning. No credit shall be made
17 for land value unless ownership of the land is transferred to the City or a permanent public easement is
18 granted, the acceptance of which is at the sole discretion of the City. The maximum value of the In-Kind
19 Improvements Agreement shall not exceed the required Eastern Neighborhoods Infrastructure Impact
20 Fee.

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

1 ~~The Commission may reduce the Eastern Neighborhoods Infrastructure Impact Fee owed for~~
2 ~~specific development projects in cases where the Director has recommended approval and the project~~
3 ~~sponsor has entered into an In-Kind Improvements Agreement with the City. In-kind improvements may~~
4 ~~be accepted if they are prioritized in the Plan, meet identified community needs as analyzed in the~~
5 ~~Eastern Neighborhoods Needs Assessment, and serve as a substitute for improvements funded by~~
6 ~~impact fee revenue such as public open spaces and recreational facilities, transportation and transit~~
7 ~~service, streetscapes or the public realm, and community facility space. Open space or streetscape~~
8 ~~improvements proposed to satisfy the usable open space requirements of Section 135 are not eligible as~~
9 ~~in-kind improvements. No proposal for In-kind improvements shall be accepted that does not conform~~
10 ~~to the criteria above. Project sponsors that pursue In-kind Improvement Agreements with the City will~~
11 ~~be charged time and materials for any additional administrative costs that the Department or any other~~
12 ~~City agency incurs in processing the request.~~

13 ~~(1) — The Eastern Neighborhoods Infrastructure Impact Fee may be reduced by the total~~
14 ~~dollar value of the community improvements provided through the In-kind Improvements Agreement~~
15 ~~recommended by the Director and approved by the Commission. For the purposes of calculating the~~
16 ~~total value, the project sponsor shall provide the Department with a cost estimate for the proposed in-~~
17 ~~kind Public Benefits from two independent sources or, if relevant, real estate appraisers. If the City has~~
18 ~~completed a detailed site-specific cost estimate for a planned improvement this may serve as one of the~~
19 ~~cost estimates provided it is indexed to current cost of construction. Based on these estimates, the~~
20 ~~Director shall determine the appropriate value of the in-kind improvements and the Commission may~~
21 ~~reduce the Eastern Neighborhoods Infrastructure Impact Fee otherwise due by an equal amount. No~~
22 ~~credit shall be made for land value unless ownership of the land is transferred to the City or a~~
23 ~~permanent public easement is granted, the acceptance of which is at the sole discretion of the City.~~

24 ~~(2) — All In-Kind Improvements Agreements shall require the project sponsor to reimburse all~~
25 ~~city agencies for their administrative and staff costs in negotiating, drafting, and monitoring~~

1 ~~compliance with the In-Kind Improvements Agreement. The City also shall require the project sponsor~~
2 ~~to provide a letter of credit or other instrument, acceptable in form and substance to the Planning~~
3 ~~Department and the City Attorney, to secure the City's right to receive improvements as described~~
4 ~~above.~~

5 (e) Timing of Fee Payments. The Eastern Neighborhoods Infrastructure Impact Fee is due
6 and payable to the Development Fee Collection Unit at DBI prior to issuance of the first construction
7 document, with an option for the project sponsor to defer payment to prior to issuance of the first
8 certificate of occupancy upon agreeing to pay a deferral surcharge that would be paid into the
9 appropriate fund in accordance with Section 107A.13.3 of the San Francisco Building Code.

10 ~~(fd) Waiver or Reduction of Fees. The provisions for waiver or reduction of fees are set~~
11 ~~forth in Section 406 of this Article. Development projects may be eligible for a waiver or reduction of~~
12 ~~impact fees, per Section 406 of this Article. Additionally, In addition to those provisions project~~
13 sponsors with a development project located within an applicable San Francisco
14 Redevelopment Project Area may reduce their required contribution to the Eastern
15 Neighborhoods Public Benefits Fund by half of any total sum that they would otherwise be
16 required to pay under this Section, if the sponsor

17 (1A) has filed its first application, including an environmental evaluation application or
18 any other Planning Department or Building Department application before the effective date of
19 Section 423.1 et seq. and

20 (2B) provides the Zoning Administrator with written evidence, supported in writing by
21 the San Francisco Redevelopment Agency, that demonstrates the annual tax increment which
22 could be generated by the proposed project would support a minimum future bonding capacity
23 equal to \$10,000,000 or greater.

24 **SEC. 423.5. THE EASTERN NEIGHBORHOODS PUBLIC BENEFITS FUND.**
25

1 (a) There is hereby established a separate fund set aside for a special purpose
2 entitled the Eastern Neighborhoods Public Benefits Fund ("Fund"). All monies collected by the
3 Development Fee Collection Unit at DBI pursuant to Section 423.3(b) shall be deposited in a
4 special fund maintained by the Controller. The receipts in the Fund to be used solely to fund
5 Public Benefits subject to the conditions of this Section.

6 (b) Expenditures from the Fund shall be recommended by the Planning
7 Commission, and administered by the Board of Supervisors.

8 (1) All monies deposited in the Fund shall be used to design, engineer, acquire, and
9 develop and improve public open space and recreational facilities; transit, streetscape and
10 public realm improvements; and community facilities including child care and library materials,
11 as defined in the Eastern Neighborhoods Nexus Studies; or housing preservation and
12 development within the Eastern Neighborhoods Plan Area. Funds may be used for childcare
13 facilities that are not publicly owned or "publicly-accessible". Funds generated for 'library
14 resources' should be used for materials in branches that directly service Eastern
15 Neighborhoods residents. Monies from the Fund may be used by the Planning Commission to
16 commission economic analyses for the purpose of revising the fee, and/or to complete an
17 updated nexus study to demonstrate the relationship between development and the need for
18 public facilities if this is deemed necessary.

19 (2) Funds may be used for administration and accounting of fund assets, for
20 additional studies as detailed in the Eastern Neighborhoods Public Benefits Program
21 Document, and to defend the Community Stabilization fee against legal challenge, including
22 the legal costs and attorney's fees incurred in the defense. Administration of this fund includes
23 time and materials associated with reporting requirements, facilitating the Eastern
24 Neighborhoods Citizens Advisory Committee meetings, and maintenance of the fund. All
25

1 interest earned on this account shall be credited to the Eastern Neighborhoods Public
2 Benefits Fund.

3 (c) Funds shall be deposited into specific accounts according to the improvement
4 type for which they were collected. Funds from a specific account may be used towards a
5 different improvement type, provided said account or fund is reimbursed over a five-year
6 period of fee collection. Funds shall be allocated to accounts by improvement type as
7 described below:

8 (1) Funds collected from all zoning districts in the *Project Eastern Neighborhoods*
9 *Program* Area, excluding Designated Affordable Housing Zones shall be allocated to accounts
10 by improvement type according to Table 423.6.

11 (2) Funds collected in designated affordable housing zones (Mission NCT and MUR
12 (as defined in 423.2 (3)), shall be allocated to accounts by improvement type as described in
13 Table 423.6A. The revenue devoted to affordable housing preservation and development shall
14 be deposited into a specific amount to be held by the Mayor's Office of Housing.

15 A. All funds collected from projects in the Mission NCT that are earmarked for
16 affordable housing preservation and development shall be expended on housing programs
17 and projects within the Mission Area Plan boundaries.

18 B. All funds collected from projects in the MUR that are earmarked for affordable
19 housing preservation and development shall be expended on housing programs and projects
20 shall be expended within the boundaries of 5th to 10th Streets/Howard to Harrison Streets.

21 C. Collectively, the first \$10 million in housing fees collected between the two
22 Designated Affordable Housing Zones shall be utilized for the acquisition and rehabilitation of
23 existing housing.

24 (3) All funds are supported by the Eastern Neighborhoods Nexus Studies, San
25 Francisco Planning Department, Case No. 2004.0160, and monitored according to the

1 Eastern Neighborhoods Area Plans Monitoring Program required by the Administrative Code
 2 Section 10E and detailed by separate resolution.

3 TABLE 423.6

4 BREAKDOWN OF EASTERN NEIGHBORHOODS PUBLIC BENEFIT FEE/FUND BY
 5 IMPROVEMENT TYPE*

6 Improvement Type	7 Residential	8 Non-residential
9 Open space and recreational facilities	50%	7%
10 Transit, streetscape and public realm 11 improvements	42%	90%
12 Community facilities (child care and 13 library materials)	8%	3%

14 *Does not apply to Designated Affordable Housing Zones, which are addressed in
 15 Table 423.6A.

16 TABLE 423.6A

17 BREAKDOWN OF EASTERN NEIGHBORHOODS PUBLIC BENEFIT FEE/FUND BY
 18 IMPROVEMENT TYPE FOR DESIGNATED AFFORDABLE HOUSING ZONES

19 Improvement Type	20 Residential	21 Non-residential
22 Affordable housing preservation and 23 development	75%	n/a
24 Open space and recreational facilities	13%	7%
25 Transit, streetscape and public realm	10%	90%

1	improvements		
2	Community facilities (child care and		
3	library materials)	2%	3%

4 (d) With full participation by the Planning Department and related implementing
5 agencies, the Controller's Office shall file a report with the Board of Supervisors beginning
6 180 days after the last day of the fiscal year of the effective date of Section 423.1 et seq. that
7 shall include the following elements: (1) a description of the type of fee in each account or
8 fund; (2) amount of fee collected; (3) beginning and ending balance of the accounts or funds
9 including any bond funds held by an outside trustee; (4) amount of fees collected and interest
10 earned; (5) identification of each public improvement on which fees or bond funds were
11 expended and amount of each expenditure; (6) an identification of the approximate date by
12 which the construction of public improvements will commence; (7) a description of any inter-
13 fund transfer or loan and the public improvement on which the transferred funds will be
14 expended; and (8) amount of refunds made and any allocations of unexpended fees that are
15 not refunded.

16 (e) A public hearing shall be held by the Recreation and Parks Commissions to elicit
17 public comment on proposals for the acquisition of property using monies in the Fund that will
18 ultimately be maintained by the Department of Recreation and Parks. Notice of public
19 hearings shall be published in an official newspaper at least 20 days prior to the date of the
20 hearing, which notice shall set forth the time, place, and purpose of the hearing. The Parks
21 Commissions may vote to recommend to the Board of Supervisors that it appropriate money
22 from the Fund for acquisition and development of property acquired for park use.

23 (f) The Planning Commission shall work with other City agencies and commissions,
24 specifically the Department of Recreation and Parks, DPW, and the MTA, to develop
25

1 agreements related to the administration of the improvements to existing public facilities and
2 development of new public facilities within public rights-of-way or on any acquired public
3 property, using such monies as have been allocated for that purpose at a hearing of the Board
4 of Supervisors.

5 (g) The Planning Commission, based on findings from the Interagency Planning &
6 Implementation Committee (IPIC), shall make recommendations to the Board regarding
7 allocation of funds.

8 (h) Within 60 days of receiving the Eastern Neighborhoods Capital Expenditure
9 Evaluation Report as specified in Administrative Code Section 10E.7, the Office of the
10 Controller shall assess whether funds collected from the Eastern Neighborhoods Impact Fee
11 are being effectively utilized for capital projects serving the Eastern Neighborhoods, and
12 whether such projects are successfully advancing towards implementation, as set forth in the
13 abovementioned Section. Based on this assessment, the following shall occur:

14 (A) If the Controller determines that the funds have been effectively utilized as set
15 forth in Section 10E.7 of the Administrative Code, the Controller shall issue an affirmative
16 finding to the Board of Supervisors and the Planning Commission certifying that the intent of
17 this aforementioned Section is being met. No further Controller action is necessary for
18 purposes of this Subsection.

19 (B) If the Controller fails to issue the certification described in Subsection (h) ~~(A)~~
20 above or if the Controller determines that the fees are not being effectively utilized as set forth
21 in Administrative Code Section 10E.7 and notifies the Board of Supervisors and Planning
22 Commission of this determination, then the following shall occur:

23 (i) Any project specified below within the Eastern Neighborhoods Area Plan that
24 has not already received final and effective approvals from the Planning Department, Zoning
25

1 Administrator, and/or the Planning Commission, shall require a conditional use authorization,
2 in addition to any other approvals necessary under the Planning Code:

3 (aa) Residential projects containing more than 10 new units that have not received
4 issuance of their first site or building permit; or

5 (bb) Non-residential projects containing a net new addition or new construction of
6 10,000 square feet or more that have not received issuance of their first site or building
7 permit.

8 (C) Elimination of interim conditional use requirement. (i) At any time after the
9 Controller has determined that Eastern Neighborhood impact fees are not being effectively
10 utilized as set forth in Section 423.6(h)(B) above, or fails to certify that they are being
11 effectively utilized as set forth in Section 423.6(h)(A), the Planning Department may provide
12 the Controller with a newly updated or revised Eastern Neighborhoods Capital Expenditure
13 Evaluation Report.

14 (ii) Within 60 days of receiving an updated or revised Report, the Office of the
15 Controller shall determine whether funds collected from the Eastern Neighborhoods Public
16 Benefit Fee are being effectively utilized for capital projects serving the Eastern
17 Neighborhoods consistent with the intent of the Section 10E.7 of the Administrative Code.

18 (iii) If, on the basis of a new, updated or revised Eastern Neighborhoods Capital
19 Expenditure Evaluation Report, the Controller determines that the development impact fees
20 collected to date are being effectively utilized as set forth in Section 423.6 (h)(A) above, any
21 projects within the Eastern Neighborhoods Plan Area that required a conditional use
22 authorization on an interim basis as set forth in Section 423.6(h)(B) shall no longer require
23 such conditional use authorization unless the underlying use requires conditional use
24 authorization independent of the requirements set forth in Section 423.6(i)(B).

25 **SEC. 4328. - INTEGRATED PDR FEE DISCOUNT PROGRAM.**

1 (a) Purpose. The purpose of the Integrated PDR Fee Discount Program is to
2 encourage the hiring of disadvantaged workers by existing or future business tenants and/or
3 occupants in newly permitted Integrated PDR space. Owners of buildings with Integrated PDR
4 space are given the option of deferring up to fifty percent of development impact fees that
5 would otherwise be owed, to encourage their Integrated PDR tenants and/or occupants to
6 register their respective business with the Office of Economic and Workforce Development's
7 (OEWD) Integrated PDR Program. At the end of a five-year period commencing upon
8 issuance of the first site or building permit, owners of Integrated PDR buildings will be
9 responsible for payment of the full deferred amount unless they can demonstrate to the
10 Planning Department, based on registration records submitted to OWED, that a certain
11 percentage of the employees occupying Integrated PDR space qualify as "disadvantaged
12 workers." The greater the percentage of disadvantaged workers, the higher the fee waiver.

13 (b) Definitions.

14 (1) Applicant. For purposes of this section, the owner of a building that contains
15 permitted Integrated PDR space.

16 (2) Integrated PDR. This is defined in Section 890.49.

17 (3) Disadvantaged worker. Any employee who qualifies for the California State.

18 (4) Enterprise Zone hiring credit for the San Francisco Enterprise Zone.

19 (5) Discount-eligible worker, a disadvantaged worker who lives within the City and
20 County of San Francisco.

21 (6) Discount-program fees. The fees that are subject to this discount program are the
22 Eastern Neighborhoods Fees (per Sec. 327), the Transit Impact Development Fee (TIDF) (per
23 Chapter 38 of the Administrative Code), and the Jobs-Housing Linkage Fee (per Section 313).

1 (7) Integrated PDR Registration Record. A dated receipt acknowledging that the
2 subject Integrated PDR business has newly registered or updated their existing registration
3 with the Office of Economic and Workforce Development (OEWD).

4 (8) Outstanding Discount-Program fees. The 50% of Discount-program fees that are
5 not paid at the issuance of the first site or building permit.

6 (c) Controls.

7 (1) Any project involving the establishment of net new Integrated PDR space may
8 choose to avail itself of the fee discounts described below in this Subsection.

9 (2) Initial fee reduction and payment:

10 (A) At the issuance of the first site or building permit, the Applicant will pay 50% of
11 discount-program fees.

12 (B) An Integrated PDR Notice of Special Restrictions (NSR) will be placed on the
13 property stating the following:

14 (i) The amount of Outstanding Discount-Program fees.

15 (ii) That the Outstanding Discount-Program fees, adjusted for the cost of living as
16 defined by the Controller's Office, will be paid within 30 days of notification of the applicant by
17 the Planning Department of the amount of payment due. A reduction or waiver of these
18 outstanding fees is available only if the conditions of subsection (c)(3) of this Section are met.

19 (3) Outstanding Discount-Program fee determination and payment:

20 (A) After five years from the issuance of the first site or building permit for any
21 Integrated PDR space, the Applicant must pay the Outstanding Discount-Program fees.

22 (B) An Applicant may seek to waive or reduce any Outstanding Discount-Program fees
23 by providing sufficient evidence in the form of Integrated PDR Registration Records to
24 demonstrate to the Planning Department that they have satisfied the workforce goals of the
25 Integrated PDR program as of the date of the filing of an application for such a waiver.

1 (C) Outstanding Discount-Program fees may be waived or forgiven under the following
2 circumstances:

3 (i) If 10% to 14.9% of the total workforce currently employed in space that is permitted
4 as Integrated PDR is discount-eligible workers, then 50% of the outstanding fees will be
5 waived.

6 (ii) If 15% to 19.9% of the total workforce currently employed in space that is permitted
7 as Integrated PDR is discount-eligible workers, then 60% of the outstanding fees will be
8 waived.

9 (iii) If 20% to 24.9% of the total workforce currently employed in space that is permitted
10 as Integrated PDR is discount-eligible workers, then 70% of the outstanding fees will be
11 waived.

12 (iv) If 25% to 29.9% of the total workforce currently employed in space that is permitted
13 as Integrated PDR is discount-eligible workers, then 80% of the outstanding fees will be
14 waived.

15 (v) If 30% to 34.9% of the total workforce currently employed in space that is permitted
16 as Integrated PDR is discount-eligible workers, then 90% of the outstanding fees will be
17 waived.

18 (vi) If 35% or more of the total workforce currently employed in space that is permitted
19 as Integrated PDR is discount-eligible workers, then 100% of the outstanding fees will be
20 waived.

21 (D) Applicants who cannot provide sufficient evidence in the form of Integrated PDR
22 Registration records to demonstrate to the Planning Department that tenants and/or
23 occupants of any Integrated PDR space have satisfied the annual reporting requirements of
24 the Office of Economic and Workforce Development (OEWD), or its successor, will not be
25 eligible for any waivers or reductions of Outstanding Discount-Program Fees, and will owe the

1 full amount of any Outstanding Discount-Program Fees five years after the issuance of the
2 first site or building permit. These annual reporting requirements are stated contained in the
3 City's Administrative Code Sec. 10E.7.

4 (E) Applicants must apply to the Planning Department for Outstanding Discount-
5 Program Fee reduction or waiver. This application must be submitted within three months
6 before or after the five-year anniversary of the issuance of the first site or building permit. The
7 Planning Department shall transmit the application to the Office of Economic and Workforce
8 Development (OEWD), or its successor, for verification of relevant employment statistics, and
9 the Director of OEWD shall subsequently submit its findings to the Planning Department.


10 (F) Payment of outstanding fees is due within 30 days of notification of the applicant by
11 the Planning Department of the amount of payment due.

12 (G) Failure to pay shall be deemed a violation of the Planning Code and result in an
13 enforcement action by the Department, which may include, referral to the Bureau of
14 Delinquent Revenue and a lien on the subject property. Any enforcement action also may
15 result in additional charges or penalties to cover the City's costs in the enforcement action,
16 including, but not limited to City Attorney's fees.

17 ~~Section 3. Application. This legislation applies to all projects. Notwithstanding the~~
18 ~~foregoing, the amendments to Section 421.3 shall not apply to any application that meets the~~
19 ~~following criteria: (1) The subject property is or will be owned and operated by a non-profit~~
20 ~~which is exempted from payment of income tax under Section 501(c)(3) of the Internal~~
21 ~~Revenue Code of the United States; (2) its first development application to the Planning~~
22 ~~Department was submitted prior to April 15, 2010; and (3) involves an entertainment use of~~
23 ~~less than 50,000 square feet.~~

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

By: 
Susan Cleveland-Knowles
Deputy City Attorney

REVISED LEGISLATIVE DIGEST

[Planning Code Amendments – Area Plan Impact Fee and Jobs-Housing Linkage Program Modifications.]

Ordinance amending the San Francisco Planning Code sections related to Area Plan Impact Fees (Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park) and Jobs-Housing Linkage Fee to (1) improve Planning Code readability and ease of application with regard to impact fees; to (2) create consistent definitions and application across the Area Plan Impact Fee and Jobs-Housing Linkage Fee provisions; to (3) better recognize and account for the impact of existing conditions of development sites affected by the Area Plan Impact Fees and the Jobs-Housing Linkage Fee; to (4) promote adaptive re-use of existing buildings in the Eastern Neighborhoods; to and (5) clarify the impact fees associated with the Eastern Neighborhoods' on-going "legitimization" program; and adopting findings, including Section 302, environmental findings, and findings of consistency with the General Plan and Planning Code Section 101.1.

Existing Law

Area Plan Impact Fees: The four Area Plan impact fees (Rincon Hill, Market and Octavia [including the additional affordable housing fee that applies in the Market and Octavia Area Plan], Eastern Neighborhoods, and Balboa Park) each have their own definitions and applications. Some of the differences – including in the ways the sections are organized, what projects are subject to the fees, and how the square footage subject to fees is measured – could make the fee programs subject to inconsistent interpretation and application. In addition, the different Area Plan fee programs exempt certain uses from paying impact fees when new development occurs, but if these uses convert to a use that is subject to an impact fee, there is no formal mechanism to recognize a credit for the existing use.

Jobs Housing Linkage Program: Some of the existing definitions and application sections of the Jobs-Housing Linkage Fee, Planning Code Section 413 et seq. (formerly Section 313 et seq.) are subject to interpretation and have not been recently updated.

Eastern Neighborhood Plan Area Fees: Parcels in the Eastern Neighborhood Plan Area are divided into three fee tiers, depending on how much height limits were raised or lowered by the Plan. Fee Tiers 2 and 3 are applied to development projects that involve both new construction and when projects are utilizing existing space in existing buildings.

Legitimization Program: The Eastern Neighborhoods Plan adopted a Legitimization Program (Planning Code Section 179.1) to enable formerly permissible but unpermitted uses to receive the appropriate permits. Some of the language regarding fees for projects seeking entitlement through this program could benefit from clarification.

Amendments to Current Law

Area Plan Impact Fees: The proposed legislation standardizes the fees in the four Area Plans. The primary changes are that the proposed legislation provides that all Area Plan fees:

- are organized in the same way including a list of projects subject to the fees and tables conveying the applicable fee for net additions and conversion from one use to another;
- use gross square feet (instead of net);
- are applied to residential development projects that add one new unit and/or have a net addition of over 800 gross square feet to an existing unit; are applied to nonresidential development projects that include net new construction or addition of over 800 gross square feet for any use except PDR. The only exceptions to this rule is are in Rincon Hill where non-residential square footage continues to be exempt from Area impact fees and for the Market and Octavia additional affordable housing requirement that applies only to projects that are subject to the Residential Inclusionary Affordable Housing Program, Planning Code Sections 415 et seq.

In addition, the proposed legislation institutes a credit mechanism to account for the impact of existing uses on a development site. This includes specifying the credit for PDR uses in all of the Area Plan Impact Fees and specifying a credit for other non-residential uses in the Rincon Hill Impact Fee.

Jobs Housing Linkage Program: The proposed legislation clarifies and streamlines selected definitions and application sections of the Jobs-Housing Linkage Fee, Planning Code Section 413 et seq. (formerly Section 313 et seq.) to facilitate consistency of application. In addition, the proposed legislation institutes a credit mechanism to account for the impact of existing uses on a development site. This includes specifying the credit for institutional and PDR uses.

Eastern Neighborhood Plan Area Fees: The proposed legislation revises the Fee Tiers in the Plan Area so that all changes of use in existing buildings are charged the lowest (Tier 1) impact fee.

Legitimization Program: the proposed legislation specifies the amount of Jobs-Housing Linkage Fee and Transit Impact Development Fee that would be applicable and clarifies that the Eastern Neighborhood Area Plan fee is not applicable. The legislation makes these and other technical amendments that harmonize the Code with the way the Planning Department has been implementing this program.

~~_____ The legislation applies to all projects except that the amendments to Section 421.3 shall not apply to any application that meets the following criteria: (1) The subject property is or will be owned and operated by a non-profit which is exempted from payment of income tax under Section 501(c)(3) of the Internal Revenue Code of the United States; (2) its first~~

~~development application to the Planning Department was submitted prior to April 15, 2010; and (3) involves an entertainment use of less than 50,000 square feet.~~

Background Information

The Planning Department and Commission developed this legislation primarily to improve the clarity of the Planning Code. The proposed legislation is meant to improve the ability of decision makers, Department staff, and the public to understand, interpret, and implement the requirements of these Sections of the Code.

Uncodified Section of the Case 2010.0194T

A. Jobs-Housing Linkage Fee for IPDR and SEW

The Jobs-Housing Linkage Fee is applied to qualifying Integrated Production, Distribution, and Repair (IPDR) and Small Enterprise Workspace (SEW) uses, as described in Section 413.6. Both IPDR and SEW are hybrid uses that are comprised of both PDR and other uses, which are typically office. Because these are hybrid uses, setting the fee required discerning its constituent uses, the proportion of each existing in the hybrid use, and the appropriate fee for each constituent use. This information was then blended to set the appropriate fee.

In terms of the its constituent uses, IPDR is a land use category created to support those companies that contain on site both PDR and office components, in addition to other accessory non-residential elements. In terms of the percentages of its constituent uses, per the definition of IPDR (Sec. 890.49), between 33% - 67% of the use's square footage must be dedicated to PDR. Given this range, it was assumed that the average use would be 50% PDR. As a hybrid PDR-office use, it is assumed that the other 50% would be used for office.

As for SEW uses, it is defined in Sec. 227(t) as a stand-alone building subdivided into independent non-residential spaces not to exceed 2,500 square feet. These spaces are intended to be small workshops and incubator spaces for any kind of job. By their nature, these spaces typically are used by both small PDR and office uses that benefit from this unique type of space. Given the expected demand and experience with similar buildings in the City, it is assumed that 50% of the space will be occupied at any given time by PDR and 50% by office spaces.

As both IPDR and SEW are assumed to consist of 50% PDR and 50%, the logical step would be to set the impact fee as an average of the PDR fee and the office fee. However, the Jobs-Housing Linkage Fee does not currently charge PDR uses. This is a matter of policy, not because PDR uses do not create impacts.

Therefore, to establish the IPDR and SEW fees, it was necessary to estimate the PDR impact fee with which to average. This was done through a simplified methodology that aimed to replicate the analysis used to establish the Jobs-Housing Linkage fee. This methodology relied on job density, which is a key component of the affordable housing demand that the Jobs-Housing Linkage Fee addresses. According to the Eastern Neighborhoods Nexus Study, the typical office density is one employee per 200 square feet, and the typical PDR density is one employee per 350 square feet. Therefore, PDR is 57.1% as dense as office, and therefore 57.1% as likely to create affordable housing demand. Given that the Jobs-Housing Linkage Fee for office is currently \$19.96 per gross square foot, the imputed Jobs-Housing Linkage Fee for PDR is 57.1% of that, or \$11.41. Therefore, the average of the office fee and imputed PDR fee is $(\$19.96 + \$11.41)/2$, or \$15.69.

It is important to note that, at its time of establishment, the Jobs-Housing Linkage Fee was set at 50% of the impact of uses, as established by that fee's Nexus Study. Subsequently, the fee has only been adjusted to reflect inflation. Therefore, the fee established above for IPDR and SEW are well below the actual impact caused by these uses.

B. Legitimization Fee

In some instances, the Eastern Neighborhoods Plan changed the Code such that formerly permitted uses would no longer be permitted in certain districts. Recognizing that not all existing uses are properly permitted, and to help ameliorate the impact of this legislative change, the City adopted a "Legitimization" program which provided a three-year period for uses to receive the proper permits. Uses benefitting from this "legitimization" program could be charged up to the full amount of applicable impact fees, such as the Transit Impact Development Fee (TIDF), the Jobs-Housing Linkage Fee, and the Eastern Neighborhoods Impact Fees. However, the fees affiliated with this program are meant to incentivize uses getting the proper permits, and to reflect the conditions in place immediately before the implementation of the Eastern Neighborhoods. As such, no Eastern Neighborhoods Impact Fee is charged on these uses. Additionally, for the Jobs-Housing Linkage Fee, uses are credited for existing PDR on site. The estimated credit for PDR is \$11.41 per square foot, as developed using the methodology described above. The full TIDF is charged, as this fee already accounts for the impact of existing PDR uses on site.

C. Credit for Existing Uses

New development creates new demand for community infrastructure such as open space, streetscape, transportation, and child care. The City's impact fees are intended to help cover the costs of meeting this demand. However, for certain uses, City policy is to not charge impact fees, so as to support their development. Such uses include Institutional uses for the Jobs-Housing Linkage Fee, and Production, Distribution, and Repair (PDR) uses for the Jobs-Housing Linkage Fee and all of the Area Plan Impact Fees (i.e., Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park).

Just because uses are not charged impact fees does not mean that they do not have an impact. This is important to take into account when uses are converting from non-paying uses to paying uses. This legislation does so by codifying a credit for existing uses on a site. These credits were developed by replicating the methodologies used to create the existing impact fees, and applying this methodology to deduce the potential credit.

For the Jobs-Housing Linkage Fee, to determine the credit it was necessary to replicate that fee's nexus study to determine what would have been charged for institutions and PDR. This is necessary because the original nexus study did not analyze those uses. However, for other uses that do get charged the impact fee (e.g., office, retail, etc.), the fee was based on the demand for affordable housing that a use would generate, which itself is a reflection of job density and wages. For institutions and PDR, the analysis evaluated relative impact compared to the established fee for office. This relative estimated impact was developed using job density data from the Eastern Neighborhoods Nexus Study and wage data from the 2000 Census. As per job density, institutions and office both have a job density of 225 square feet per employee, while PDR has a job density of 350 square feet per employee. As per wages, the median wage for office is \$24.55/hr, for institutions it is \$19.23/hr, and for PDR it is \$22.14/hr. Relative to office, institutional uses therefore have 100% of the job density impact and 121.7% wage impact ($\$19.23/(\$24.55-\$19.23)$), whereas PDR has 64.3% of the density of office ($225/350$) and 109.8% of the wage impact ($\$22.14/(\$24.55-\$19.23)$). Averaging these two effects, institutional uses create 110.9% of the impact of offices, whereas PDR creates 70.6%. As offices have a fee

of \$19.96, the imputed fee for institutions is \$22.14 and for PDR its \$14.09. Because institutions have a higher imputed impact than any use, it means that any conversion from institutions to another use would reduce impact, and thus no fee would be charged. For PDR, any conversion would be credited \$14.09.

For the Area Plan Impact Fees, the credit determination relied on the Eastern Neighborhoods Nexus Study, which was the only Area Plan nexus study that evaluated PDR impacts. Per that study, PDR uses created approximately half of the impact of office uses (\$12.04 to \$25.71). Therefore, in each of the Area Plans, the PDR credit was set at 50% of the impact fee for office uses. In the Eastern Neighborhoods, that credit is \$3 (representing 50% of the \$6 non-residential fee). Based on the same logic, the credit for existing PDR is \$1.70 in Market and Octavia, \$1.80 in Rincon Hill, and \$0.75 in Balboa Park.

D. Changing from Occupied Square Feet to Gross Square Feet

Previously, fees are assessed by occupiable square feet in the Rincon Hill and Market and Octavia Plan Areas, and gross square feet in the Eastern Neighborhoods and Balboa Park Plan Areas. As one of the stated purposes of this legislation is to create more consistency between the Plan Areas, it was necessary to choose one approach. Gross square feet is generally considered easier to calculate and less subject to interpretation. Therefore, Rincon Hill and Market and Octavia fees are hereafter to be levied on a per gross square foot basis.

Definitionally, projects have more gross square feet than occupiable square feet. However, it is not the intention of this legislation to increase the amount of fees collected from a project. As such, the impact fees in Rincon Hill and Market and Octavia needed to be reduced, such that the resulting fee would be ostensibly equivalent – recognizing that each individual case would be different, and so the fee based on calculations of gross square feet would approximate but not necessarily match the fee calculated by using occupiable square feet.

For residential projects in Rincon Hill, occupiable square feet is approximately 10% less than gross square feet. Therefore, the fees were reduced by 21%, from \$11.00 per occupiable square foot for the Rincon Hill Community Infrastructure Impact Fee to \$8.60 per gross square foot, and from \$14.00 per occupiable square foot for the SoMa Stabilization Fee to \$10.95 per gross square foot. For residential projects in Market and Octavia, occupiable square feet is approximately 10% less than gross square feet. Therefore, the fee was reduced by 10%, from \$10.00 per occupiable square foot to \$9.00 per gross square foot. For non-residential projects in Market and Octavia, occupiable square feet is approximately 15% less than gross square feet. Therefore, the fee was reduced by 15%, from \$4.00 per occupiable square foot to \$3.40 per gross square foot.



SAN FRANCISCO PLANNING DEPARTMENT

July 6, 2010

Ms. Angela Calvillo, Clerk
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

File 100917

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: **Board File Number** _____
Transmittal of Planning Department Case Number 2010.0194T
Area Plan Impact Fee and Jobs-Housing Linkage Program Modifications
Planning Commission Recommendation: *Recommend Approval*

Dear Ms. Calvillo,

On July 1, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance;

The proposed Ordinance would amend the Planning Code to achieve the following: 1) improve Planning Code readability and ease of application with regard to impact fees; 2) create consistent application across the Area Plan Impact Fees (Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park); 3) better recognize and account for the impact of existing conditions on development sites in the Area Plan Impact Fees and the Jobs-Housing Linkage Fee; 4) promote adaptive re-use of existing buildings in the Eastern Neighborhoods; 5) clarify the impact fees associated with the Eastern Neighborhoods' ongoing "legitimization" program.

The proposed Planning Code modifications have been determined to be exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

At the July 1st hearing, the Commission adopted Resolution 18127 with a recommendation of approval to the Board of Supervisors regarding the proposed Ordinance.

Please find attached documents related to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

John Rahaim
Director of Planning

BY _____ AK

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SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18127

HEARING DATE: JULY 1, 2010

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CA 94103-2479

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Case No.: 2010.0194T
Project: Impact Fees Clean-Up and Modifications
Staff Contact: Steve Wertheim – (415) 558-6612
steve.wertheim@sfgov.org
Recommendation: Approval

APPROVING AMENDMENTS TO THE PLANNING CODE TO IMPROVE READABILITY AND EASE OF APPLICATION WITH REGARD TO IMPACT FEES, CREATE CONSISTENT DEFINITIONS AND APPLICATION ACROSS THE CODE, CREATE A MECHANISM TO CREDIT PROJECTS FOR THE IMPACTS OF EXISTING USES ON DEVELOPMENT SITES, PROMOTE ADAPTIVE RE-USE OF EXISTING BUILDINGS IN THE EASTERN NEIGHBORHOODS, AND CLARIFY THE IMPACT FEES ASSOCIATED WITH THE EASTERN NEIGHBORHOODS' ON-GOING "LEGITIMIZATION" PROGRAM.

PREAMBLE

WHEREAS, the City has adopted Area Plan Impact Fees in recent years in such areas as Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park; and

WHEREAS, each of these impact fees was adopted as part of separate Ordinances that also involved the creation of Area Plans, changes to height and zoning, and substantial amendments changes to the Planning Code; and

WHEREAS, the Code sections controlling impact fees often lacked clarity or differed in application between Area Plans in ways that made it difficult for the public to comprehend and staff to consistently implement the Code; and

WHEREAS, the impact fees controls do not contain a mechanism to credit project for the impacts of existing uses on development sites; and

WHEREAS, the impact fee structure did not sufficiently encourage adaptive re-use of existing buildings that represent an important resource in San Francisco; and

WHEREAS, the proposed legislation is intended to resolve the aforementioned issues; and

WHEREAS, the Planning Commission (hereinafter "Commission") adopted Resolution 18074 at a duly noticed public hearing at a regularly scheduled meeting to initiate the proposed Ordinance on April 15, 2010; and

WHEREAS, the proposed revisions to the Planning Code were duly noticed in a newspaper ad on May 13, 2010; and

WHEREAS, Ordinance No. 108-10, was adopted by the Board of Supervisors on May 17, 2010, revising most of the Planning Code sections included in Case 2010.0194T, and incorporating some of the changes proposed in Case 2010.0194T, and therefore requiring substantial changes to Case 2010.0194T to reflect the changes made by Ordinance No. 108-10; and

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 1, 2010; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

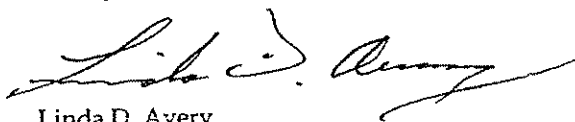
WHEREAS, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Commission has reviewed the proposed Ordinance:

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends approval of the proposed Ordinance and adopts this Resolution to that effect.

I hereby certify that the foregoing Resolution was **ADOPTED** by the San Francisco Planning Commission on July 1, 2010.



Linda D. Avery
Commission Secretary

AYES: Miguel, Antonini, Borden, Lee, Sugaya

NOES: Olague, Moore

ABSENT:



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Amendment

HEARING DATE: JULY 1, 2010; INITIATION HEARING DATE: APRIL 15, 2010

Case No.: 2010.0194T
Project: Impact Fees Clean-Up and Modifications
Staff Contact: Steve Wertheim – (415) 558-6612
steve.wertheim@sfgov.org

Recommendation: Approval

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The action before the Commission is approval of the code amendments described below. These amendments were Initiated by the Planning Commission on April 15, 2010, and were duly noticed in a newspaper ad on May 13, 2010.

Subsequent to the Initiation of these Code amendments, a substantial revision to the Planning Code, Ordinance No. 108-10, was adopted by the Board of Supervisors on May 17, 2010. Ordinance No. 108-10 revised most of the Planning Code sections included in Case 2010.0194T, and incorporated some of the changes proposed in Case 2010.0194T. Therefore, substantial revisions to Case 2010.0194T were necessitated to reflect the changes made by Ordinance No. 108-10.

CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to achieve the following: 1) improve Planning Code readability and ease of application with regard to impact fees; 2) create consistent application across the Area Plan Impact Fees (Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park); 3) better recognize and account for the impact of existing conditions on development sites in the Area Plan Impact Fees and the Jobs-Housing Linkage Fee; 4) promote adaptive re-use of existing buildings in the Eastern Neighborhoods; 5) clarify the impact fees associated with the Eastern Neighborhoods' on-going "legitimization" program

The majority of this proposed legislation involves technical corrections and clarifications of Code language, which do not amount to substantive changes to the Code. However, there are several proposed substantive policy changes, including:

- Amending the Jobs-Housing Linkage fee to account for the impact of existing Production Distribution and Repair (PDR) and institutional uses on development sites. For conversions from existing PDR to other uses, development would receive a credit of \$14.09 per gross square foot. For conversions from existing institutions to other uses, the development would receive a credit for the full fee. Closing a loophole whereby the definition of retail included many uses considered to be PDR, such as those contained in Code Sections 220, 222, 223, 224, and 225.

- Amending the Rincon Hill Impact Fee to account for the impact of existing PDR and other non-residential uses on development sites. For conversions from existing PDR to residential uses, development would receive a credit of \$1.80 per gross square foot. For conversions from other non-residential uses to residential uses, the development would receive a credit of \$3.60 per gross square foot.
- Amending the Market and Octavia, Eastern Neighborhoods, and Balboa Park Impact Fees to account for the impact of existing PDR on development sites. For conversions from existing PDR to other non-residential uses or residential uses, development would receive a credit of \$1.70 per gross square foot for the Market and Octavia Impact Fees, \$3.00 per gross square foot for the Eastern Neighborhoods Impact Fees, and \$0.75 per gross square foot for the Balboa Park Impact Fees.
- Amending the Eastern Neighborhoods Impact Fee such that changes of use in existing buildings are always charged the lowest fee tier. For projects in Fee Tier 1, there would be no change in fees. For projects in Fee Tier 2, the fee reduction would be \$4.00 per gross square foot for both residential and non-residential uses. For projects in Fee Tier 3, the fee reduction would be \$8.00 per gross square foot for both residential and non-residential uses.

The Way It Is Now:

- The definitions and application of the Jobs-Housing Linkage Fee (Sec. 313) are difficult to comprehend, and thus subject to inconsistent interpretation and application.
- The four Area Plan Impact Fees (Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park) each have their own applications. In many instances, the differences are minor or subtle, yet the differences make these fee programs subject to inconsistent interpretation and application. These differences include variations in:
 - How the sections are organized,
 - Which projects are subject to the impact fees,
 - How the area subject to fees are measured.
- Different fee programs exempt certain uses from paying impact fees when new development occurs. When these uses convert to uses that are subject to impact fees, no credit mechanism exists to recognize the impact of the existing uses. These fee-exempt uses are PDR uses in all the Area Plan Impact Fees and the Jobs-Housing Linkage Fee, institutional uses in the Jobs-Housing Linkage Fee, and other non-residential uses in the Rincon Hill Impact Fee.
- Parcels in the Eastern Neighborhoods Plan Area are divided into three fee tiers, depending upon how much height limits were raised or lowered by the Eastern Neighborhoods Plan. Fee Tiers 2 and 3 are applied to development projects that involve both new construction and when project are utilizing existing space in existing buildings.
- The language of the Eastern Neighborhoods Legitimization Program (Section 179.1) is unclear as to what fees would be applied to projects seeking entitlement through this program, and when such fees would be due, and thus subject to inconsistent interpretation and application.
- References are incorrect and/or outdated in several areas.

The Way It Would Be:

- For the Jobs-Housing Linkage Fee, the definitions and applications have been clarified and streamlined to facilitate ease and consistency in implementation.
- The application of the four Area Plan Impact Fees (Rincon Hill, Market and Octavia, Eastern Neighborhoods, and Balboa Park) has been standardized, wherever possible. This includes standardizing:
 - The way each section is organized, to make information easier to find. This includes creating a clear list of the projects to which the fee applies, and tables conveying the fee both for net additions of use and in instances where square footage is converting from one use to another,
 - The use of gross square feet (instead of net) to measure a project's impact,
 - Which residential projects are subject to the impact fees, including those that add one new unit and/or net additions over 800 gross square feet to an existing unit,
 - Which non-residential projects are subject to the impact fees, including net additions of gross square feet in new construction and over 800 gross square feet to an existing unit, and that all non-residential units that are not PDR are subject to impact fees. The exception to this standardization continues to be Rincon Hill, where non-residential square footage is not charged the impact fee.
- A credit mechanism has been developed to account for the impact of the existing uses on a development site. This includes specifying the credit for PDR uses in all the Area Plan Impact Fees and the Jobs-Housing Linkage Fee, specifying a credit for institutional uses in the Jobs-Housing Linkage Fee, and specifying a credit for other non-residential uses in the Rincon Hill Impact Fee. See the first section of this memo for more details.
- In the Eastern Neighborhoods Plan Area, the Fee Tiers have been revised such that all changes of use in existing buildings are charged the lowest (Tier 1) impact fees. See the first section of this memo for more details.
- For the Eastern Neighborhoods Legitimization Program (Section 179.1), the Code now specifies the amount of the Jobs-Housing Linkage Fee and Transit Impact Development Fee that would be applicable, and that the Eastern Neighborhoods Impact Fee is not applicable. Also, the language specifies that fees are due at first site or building permit, and that the fee deferral option requires at least 20% payment at the time of the first site or building permit. These are technical changes, as this program has already been implemented by the Planning Department in the manner that is now being codified.
- References have been corrected and/or updated as necessary.

REQUIRED COMMISSION ACTION

The proposed Resolution is before the Commission so that it may recommend approval or disapproval of Planning Code amendments.

RECOMMENDATION

The Department recommends that the Commission recommend *approval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

A substantial portion of the proposed changes can be classified as “good government” measures meant to improve the clarity of the Planning Code. Such changes are meant to improve the ability of decision makers, Department staff, and the public to understand, interpret, and implement the requirements of the Code.

Substantive changes are focused on ensuring that there is a reasonable relationship and legally justifiable nexus between the impacts of development projects and the impact fees levied. This includes crediting proposed development appropriately for existing uses on sites.

A final substantive change, limited to the Eastern Neighborhoods, would support the adaptive re-use of existing buildings by charging the lowest Fee Tier to changes of use. The policy to support adaptive re-use of existing buildings is because such buildings are generally more affordable than new buildings, often represent historic resources, and do not require the environmental inputs related to new construction.

ENVIRONMENTAL REVIEW

The proposal to amend the Planning Code would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no letters regarding this legislation.

RECOMMENDATION: Approval
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Attachments

- Exhibit A: Draft Planning Commission Resolution to approve the Draft Ordinance
- Exhibit B: Guide to the Draft Ordinance
- Exhibit C: Draft Ordinance

Guide to Case 2010.0194T: Impact Fee Clean-Up and Modifications Legislation

We recognize that the Planning Code is not easy to navigate. Even more difficult is trying to negotiate all the strikethroughs, underlines, and moving text that are part of any proposed Code amendment. The table below is intended to distill the proposed changes and provide as a synopsis of both the proposed changes and the underlying rationale – while providing more detail than an “Executive Summary”.

It is important to note that this Guide will look substantially different than the Guide published in April 2010 for the Initiation of Case 2010.0194T. This is because, subsequent to the Initiation of these Code amendments (April 15, 2010), Ordinance No. 108-10 was adopted by the Board of Supervisors (May 17, 2010). Ordinance No. 108-10 revised most of the Planning Code sections included in Case 2010.0194T, moved most of the relevant Code Sections to a new Article 4, and incorporated some of the changes proposed in Case 2010.0194T. This Guide therefore conveys how Case 2010.0194T would amend the new Code “baseline” established by Ordinance No. 108-10 so as to still fulfill the original goals of these proposed Code Amendments.

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
179.1(g)	179.1(g)	Legitimization of uses in the Eastern Neighborhoods – fee amount	Says “shall pay all applicable fees” – too vague and subject to uneven interpretation.	Specifies which fees, and how much would be owed. Numbers based on a July 2008 memo staff presented to the Planning Commission during the Eastern Neighborhoods hearings, which lays out the proposed legitimization fee. This fee has already been applied in the one legitimization case seeking entitlements in the Planning Department. The policy rationale detailed in that memo utilizes the same “credit for existing uses” mechanism detailed for Section 413.6 below. Additionally, the policy rationale behind the whole “legitimization” program is to allow uses to receive proper permits available to them until the implementation of Eastern Neighborhoods Plan – and thus the Eastern Neighborhoods Impact Fees are not applied. This makes it specific – at first construction permit, consistent with the changes made by Ordinance 108-10.
179.1(g)	179.1(h)	Legitimization of uses in the Eastern Neighborhoods – fee payment	Does not specify when fee payment is due.	

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
179.1(g)(1)	179.1(h)(1)	Legitimization of uses in the Eastern Neighborhoods – fee payment	Fee deferral process lacked clarity of how it should be implemented.	Adds clarity. Specifies that with the deferral option, 20% must be put down at the time of getting the permit.
	401.17	Definition of "Change of use"	No definition exists.	Adds a definition. This is necessary to implement the credit for existing uses in the application sections of all the impact fees.
401.20, .88, .89, .90, .91, .92, .93, .94, .95, .100, .101, .119, .120, .121		Space subject to fees	Definition exists that restate how the fees are to applied, often with minor differences than what is contained in the application section of each impact fee.	Definition deleted, as this language reflects the application of fees that is best handled in the application subsections of the individual impact fees.
401.21, .47, .54, .99, .104, .117, .123	401.37	Development projects	Definitions exist for each, although they are substantively the same for purposes of implementing the fees. Also, language included concepts best handled in the application section of each impact fee.	Definitions collapsed into a single concept of a "development project". Definition revised to be clearer and more intuitive, and also align with current usage elsewhere in the Code.
401.22		Commercial use	Defines a commercial use, which was utilized for the Market and Octavia Impact Fee.	Category merged with "non-residential" use, consistent with the other Area Plan Impact Fees.
401.29, .41, .83, .84	401.28, .40, .81, .82	Agency names	Shows how agency name abbreviated	Technical addition to reflect that agencies are not always permanent, and that the responsibilities contained in the Code are conveyed to whatever agency succeeds the previous one.
401.48, .55, .105, .118, .125	401.46, .51, .91, .105, .106	Use categories	Language not written in the clearest fashion, or not relying on definitions elsewhere in the Code, thereby increasing confusion.	Definitions revised to be consistent with existing definitions in the Code without changing substance.
			For retail, definition incorporates many concepts that	For retail, definition amended such that it no longer includes PDR uses.

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
			would be considered PDR, such as laundering, home and business services, automotive repair, animal services, and wholesaling.	
401.52, .53	401.50	Gross square feet	Two very similar concepts with different definitions could lead to confusion if people view the wrong one.	Consolidated the two definitions to avoid confusion.
401.64	401.60	In-Kind Agreement	Definition included a lot of language about how to apply in-kind agreements. Not only is this an application issue, but it also conflicted with some of the content in the application sections of the various impact fees.	Definition shortened to focus on the concept, but not involve the application.
	401.63	Institutional use	Definition did not exist.	Added definition so that it's clear which uses are absolved from the Jobs-Housing Linkage Fee.
	401.64	Integrated PDR use	Definition did not exist.	Added definition to enable its implementation in the Jobs-Housing Linkage Fee.
401.82		MOCD	Definition exists for agency which no longer exists, and whose responsibilities have been subsumed into MOH.	Deleted definition. Made sure references elsewhere in Article 4 are updated.
401.87	401.85	Net addition	Definition includes unnecessary and confusing language around those uses which can receive credit against new impacts.	Deleted unnecessary language, increasing clarity.
401.102, .122	401.89, .104	Non-residential and residential use	Definition looks slightly different than others of its kind.	Revised language to increase consistency across definitions of use.
401.110	401.96	PDR use	Definition looks slightly different than others of its kind. Additionally, PDR definition doesn't include uses that are generally understood as PDR,	Revised language to increase consistency across definitions of use. Revised definition to include uses generally understood as PDR.

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
			such as arts activities and greenhouses. Definition did not exist.	
401.138	401.112	Small Enterprise Workspace		Added definition to enable its implementation in the Jobs-Housing Linkage Fee.
401.138	401.119	TIDF	Definition listed under Transit Impact Development Fee, although the Code always uses "TIDF", so you'd have to know what the acronym stands for to find the definition.	Revised and re-alphabetized such that the definition is listed under "TIDF".
413.3(a)	413.3(a)	Jobs-Housing Linkage - applicable projects	Many applications based on the same theme reduce clarity.	Collapsed unnecessary distinctions between types of development projects, relying on Section 413.5 to call out the different application to different uses. This change closes a loophole where projects could have 24,999 gross square feet of several different uses and avoid the fee.
413.3(b)	413.3(b)	Jobs-Housing Linkage - exempt projects	Language in subsection (8) difficult to follow.	Revisions made to increase readability.
413.5 and 413.8	413.5 and 413.8	Jobs-Housing Linkage - alternative payment mechanisms	Sponsors could pay in-lieu fees directly to housing developers to build (either the total in 413.5 or partial in 413.8), even if this wasn't in the City's interest.	Gives MOH the right to reject such deals if they don't serve the City's interest.
413.5(a)	413.6(a)	Jobs-Housing Linkage - fee amount	Multiple fee tables exist for the same uses - confusing as to which apply.	Re-organizes the fee application tables to be akin to those proposed for the Area Plan Impact Fees, and to include all the relevant and up-to-date fees.
				Adds a table to explicitly convey how development projects receive credit for existing uses (before this was quite buried in the Definitions, which created confusion and likely errors in fee calculation).
				Implemented a "credit for existing impact" for existing PDR and institutional uses, akin to those proposed for the Area Plan Impact Fees. This credit recognizes that, while for policy reasons we may not charge new PDR and new institutional uses, they still have an impact (as compared to instances where project creates a net addition of

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
				<p>development). The credit for existing impact was created replicating the methodology used to develop the Jobs-Housing Linkage Fee, which assessed how much of a demand for affordable housing would be developed by new non-residential development. The parameters used to measure this are job density (how many employees per square foot) and wages (how much each employee needs to afford housing). For PDR, the median wage is somewhat less than uses such as office, but the job density is the lowest of any industry. Using this methodology, the imputed Jobs-Housing Linkage Fee for PDR is calculated at \$14.09. The differential from \$14.09 to the other fees is what is charged for conversions of use. For institutions, the median wage is also somewhat less than uses such as office, but job density is quite high. Using this methodology, the imputed Jobs-Housing Linkage Fee for institutional uses is \$24.29. As this is higher than other fee categories, no Jobs-Housing Fee would be charged on conversions.</p> <p>To help implement and avoid misuse of this credit, a distinction is made between existing PDR and institutions and new ones. This prevents development from being permitted tomorrow as new PDR (and thus paying no fees) and the next day converting to office (and thus paying no fees). For new development, it is presumed that the price of conversion would be incorporated into the land value of any PDR or institutional use. This same presumption cannot be made for existing PDR and institutional uses, many of which were developed and have not changed hands since before the enactment of the Jobs-Housing Linkage Fee.</p> <p>Now that there are several Area Plan Impact Fees, it's necessary to specify in the title and text which one this is.</p>
418	418	Rincon Hill and SoMa Stabilization – title	When Rincon was the first, it didn't need to specify which community improvements fund.	
418.2	418.2	Definitions	Some typos exist.	Cleaned up typos.
418.3(b)	418.3(b)	Rincon Hill – subject projects	In Rincon, only residential projects are subject to the fee. However, the types of residential projects subject to the fee was different from the	Revision made to make consistent with other Area Plan Impact Fees. The revision allows projects with negligible impacts (i.e., additions of less than 800 square feet to existing units) to occur without being charged an impact fee.

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
418.3(b)(1)	418.3(c)	Rincon Hill -- fee amount	<p>other Area Plan Impact Fees.</p> <p>Fees were charged per net square foot.</p> <p>No credit was given for existing non-residential development.</p>	<p>Fees are charged based per gross square foot. This change is a recommendation from the Controller's Office as a best practice, because gross square feet are easier to measure. Because projects have more gross square feet than net square feet, the fee was adjusted downward such that the resulting fee should be approximately the same for development projects.</p> <p>Implemented a "credit for existing impact", as described for Section 413.6, and akin to those in the other Area Plan Impact Fees. In Rincon, impact fees are not levied on PDR or other non-residential uses. Thus, an imputed fee had to be created for both. To determine the imputed fee for non-residential uses, we took an average of the three other non-residential impact fees (Balboa, Eastern Neighborhoods, and Market and Octavia). The result (rounded) is an imputed non-residential impact of \$3.60/gross square foot. This credit of \$3.60 is therefore subtracted from any conversion of non-residential to residential, as shown in Table 418.3B (\$8.60 - \$3.60 = \$5.00). For PDR, the credit for existing impact for all the Area Plans was done by looking at the Eastern Neighborhoods Nexus Study, which shows the impact of PDR at approximately 50% of that of office. Therefore, the credit was set at 50% of \$3.60, i.e., \$1.80. If office is imputed for Rincon Hill at \$3.60/gross square foot, then PDR is imputed at \$1.80/gross square foot. This credit of \$1.80 is thus subtracted from any conversion of PDR to residential, as shown in Table 418.3B.</p>
418.3(b)(2)	418.3(d)	SoMa Stabilization and fee revisions	<p>SoMa Stabilization Fees were charged per net square foot.</p> <p>Both Rincon Hill and SoMa Stabilization fees were to be revised annually.</p>	<p>Fees are charged based per gross square foot (see explanation under 418.3(c)). Because projects have more gross square feet than net square feet, the fee was adjusted downward such that the resulting fee should be approximately the same for development projects.</p>
418.3(c)	418.3(e)	Rincon Hill -- In-Kind Agreements	In-Kind Agreement language a little difficult to navigate, as it is	<p>Ordinance 108-10 added a Sec. 409 that requires annual adjustment of fees. Therefore, it is no longer necessary to include this language in Sec. 418.</p> <p>Reorganized this subsection to enhance readability, and make it the same as the other Area Plan Impact Fees. The goal is to make the</p>

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
			one long paragraph. Some of the best practices subsequently included in the other Area Plan Impact Fees are not included here.	process transparent for both project sponsors and City decision makers.
418.3(d)	418.3(f)	Rincon Hill – Community Facilities Districts	Section does not include measures for dealing with failure to meet the agreement regarding Community Facilities Districts.	Language added to specify how to deal with failure to implement the agreement.
418.3(e)	418.3(h)	Rincon Hill and SoMa Stabilization – waivers	Language lacks clarity about the waiver process.	Minor edits made to direct the sponsor to the appropriate section if they are interested in seeking a waiver.
418.5(b)(1)	418.5(b)(1)	Rincon Hill – Improvements Fund	Funds could not be spent on library improvements, though in the Findings section (418.1) there is a discussion of library improvements as an acceptable community infrastructure investment.	Added that funds could be spent on library improvements.
418.5(b)(3)	418.5(b)(3)	Rincon Hill – Improvements Fund	Fund money couldn't be used for staffing to administer the fund itself.	Enables us to spend fund money to implement the fund.
418.6	418.6	Rincon Hill and SoMa Stabilization – evaluation	Outdated references	References updated
418.7	418.7	Rincon Hill and SoMa Stabilization – studies	Outdated references	References updated
421.1	421.1	Market and Octavia – findings	Outdated language	Technical corrections to update language and fill in blanks.
421.3(b)	421.3(b)	Market and Octavia – subject projects	Language for which projects are subject to the fee was difficult to comprehend, and necessitated looking in the definitions section.	Consolidated language for which projects are applicable. Made changes to reflect consistency across all the plans. For M&O, went from charging net addition of 20% for residential and non-residential to net addition of 800 gsf or more. This change is easier to implement and better captures the impact (since a 19% increase on a very large project would have lots of impact and not pay the fee, while a 20%

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
421.3(b)	421.3(c)	Market and Octavia – fee amount	Fees were charged per net square foot. Fees amounts not in a central place. Language unclear how fees were charged on changes and/or replacements of use – it seemed they could be charged full freight when potentially a minor impact (or none at all) occurred.	increase in a little project would). Charges all net additions involving new non-residential construction, akin to residential. Per changes in the definitions, the impact fee now applies to all non-residential projects that are not PDR, instead of just retail and office. Consolidated the fees into one place. Changes to gross square feet (see explanation in Section 418.3(c)).
421.3(c)		Market and Octavia – fee adjustments	Discussed how annual a five-year fee adjustments were to occur (old section 421.3(c)).	Implemented “credit for existing impact” for PDR uses (see section 413.6 for policy rationale). As office uses are charged \$3.40, the imputed PDR fee is \$1.70. See Section 418.3(c) to see how this imputed fee is applied in Table 421.3B.
421.3(d)	421.3(d)	Market and Octavia – In-Kind Agreements	In-Kind Agreement language a little difficult to navigate, as it is one long paragraph.	One notable policy change is that in the Market and Octavia Program Area, net additions of institutional and entertainment uses will become subject to the Market and Octavia Impact Fee.
421.3(e)	421.3(e)	Market and Octavia – Community Facilities Districts	Outdated references. Section does not include measures for dealing with failure to meet the agreement regarding Community Facilities Districts.	As per the fee adjustments, Ordinance 108-10 standardized how annual fee adjustments are to occur in Sec. 409 and how five-year adjustments are to occur in Sec. 410. Therefore, this language was no longer necessary in Sec. 421.
421.3(f)	421.3(f)	Market and Octavia – timing of fee payments	Section missing, though existing in other Area Plan Impact Fee sections.	Reorganized this subsection to enhance readability, and make it the same as the other Area Plan Impact Fees. The goal is to make the process transparent for both project sponsors and City decision makers.
421.3(g)	421.3(g)	Market and Octavia – waivers	Language lacks clarity about the waiver process.	Updated references. Language added to specify how to deal with failure to implement the agreement.
421.7	421.7	Market and Octavia –	Refers to commercial projects	Added section to describe the fee payment process. Same as language in other Area Plan Impact Fee sections.

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
422.3(b)	422.3(b)	studies Balboa Park – subject projects	List of applicable projects somewhat unclear. Fees applied to projects with new residential units, net additions of new construction of non-residential, and increases in existing non-residential by 20% or more. No credit given for existing development on site.	Consolidated language for which projects are applicable. Made changes to reflect consistency across all the plans. For Balboa, went from charging net addition of 20% for non-residential to net addition of 800 gsf or more. This change is easier to implement and better captures the impact. Charges large expansion of residential units as well.
422.3(b)	422.3(c)	Balboa Park – fee amount		Implemented “credit for existing impact” for PDR uses (see section 413.6 for policy rationale). As office uses are charged \$1.50, the imputed PDR fee is \$0.75. See Section 418.3(c) to see how this imputed fee is applied in Table 422.3B.
422.3(c)	422.3(d)	Balboa Park – In-Kind Agreement	In-Kind Agreement language a little difficult to navigate, as a couple of long paragraphs.	Reorganized this subsection to enhance readability, and make it the same as the other Area Plan Impact Fees. The goal is to make the process transparent for both project sponsors and City decision makers.
422.3(d)		Balboa Park – conditions of approval	Conditions of approval (old Sec. 422.3(d)) was extraneous and redundant language.	Conditions of approval language deleted from the text. The language that had been in this section articulates a standardized and understood process, and this additional language, which does not appear in other similar sections, had proven unnecessary and redundant.
422.3(d)	422.3(e)	Balboa Park – timing of fee payments	Section lacking clarity	Technical corrections made to increase clarity and make it the same as other Area Plan Impact Fee sections.
	422.3(f)	Balboa Park – waivers	Section lacks language about the waiver process.	Section added to direct the sponsor to the appropriate section if they are interested in seeking a waiver.
423.2	423.2	Eastern Neighborhoods – definitions	Explanation of Tiers difficult to implement, as it refers to height increases by stories (which is an unclear measure), and list is hard to parse due to unclear punctuation. Charged new construction and change of use in the same manner.	Formatted into outline form. Changed from stories to feet, which is a clearer measure. Puts into Tier 1 all changes of use. This is an effort to support adaptive re-use of existing buildings, which are an important resource of affordable non-residential space, and from an environmental standpoint do not require new materials.

Current Code Sec. (post Ord. 108-10).	Proposed Code Sec.	Topic	How It Is	How It Would Be
423.3(b)	423.3(b)	Eastern Neighborhoods -- subject projects	List of applicable projects somewhat unclear. Fees applied to projects with new residential units, net additions of new construction of non-residential, and increases in existing non-residential by 20% or more. No credit given for existing development on site.	Consolidated language for which projects are applicable. Made changes to reflect consistency across all the plans. For EN, went from charging net addition of 20% for non-residential to net addition of 800 gsf or more. This change is easier to implement and better captures the impact. Charges large expansion of residential units as well.
423.3(b)	423.3(c)	Eastern Neighborhoods -- fee amount		Implemented "credit for existing impact" for PDR uses (see section 413.6 for policy rationale). As office uses are charged \$6.00, the imputed PDR fee is \$3.00. See Section 418.3(c) to see how this imputed fee is applied in Table 423.3B.
423.3(c)	423.3(d)	Eastern Neighborhoods -- In-Kind Agreement	In-Kind Agreement language a little difficult to navigate, as a couple of long paragraphs.	Reorganized this subsection to enhance readability, and make it the same as the other Area Plan Impact Fees. The goal is to make the process transparent for both project sponsors and City decision makers.
	423.3(e)	Eastern Neighborhoods -- timing of fee payments	Section missing, though existing in other Area Plan Impact Fee sections.	Added section to describe the fee payment process. Same as language in other Area Plan Impact Fee sections.
423.3(d)	423.3(f)	Eastern Neighborhoods -- waivers	Language lacks clarity about the waiver process.	Minor edits made to direct the sponsor to the appropriate section if they are interested in seeking a waiver.
423.5	423.5	Eastern Neighborhoods -- fund	Outdated references	Technical corrections
328	428	Integrated PDR Fee Discount Program	Section is one of the only that deal with fees left in Article 3	Moves section over to Article 4.
	Uncodified	Pipeline for entertainment uses in Market & Octavia	Entertainment uses are not charged the Market and Octavia Impact Fee.	Entertainment uses would start being charged the Market and Octavia Impact Fee. However, this would not apply if the entertainment use were under 50,000 square feet, owned and operated by a non-profit, and its first development application to the Planning Department was submitted before April 15, 2010.

