

1 [Development Fee Collection Procedure; Administrative Fee.]

2
3 **Ordinance amending the San Francisco Building Code by adding Section 107A.13 to**
4 **establish a procedure for the Department of Building Inspection (DBI) to collect**
5 **development impact and in lieu fees, to provide that the fees are payable prior to**
6 **issuance of the first building permit or, in the case where a site permit is issued, the**
7 **first addendum authorizing construction of the project, with a temporary option for the**
8 **project sponsor to defer payment to prior to issuance of the first certificate of**
9 **occupancy upon agreeing to pay a deferral surcharge on the amount owed that would**
10 **be deposited into the same fund that receives the development fees, to require that any**
11 **in-kind public benefits required in lieu of payment of development fees are**
12 **implemented prior to issuance of the first certificate of occupancy for the project, to**
13 **require DBI to generate a Project Development Fee Report prior to issuance of the**
14 **building or site permit for the project listing all fees due with the opportunity for an**
15 **appeal of technical errors to the Board of Appeals, to establish a Development Fee**
16 **Collection Unit within DBI and a fee for administering the program; providing that the**
17 **ordinance's operative date is May 15, 2010; and adopting findings, including**
18 **environmental findings.**

19 NOTE: Additions are *single-underline italics Times New Roman*;
20 deletions are ~~*strike-through italics Times New Roman*~~.
21 Board amendment additions are double-underlined;
Board amendment deletions are ~~strike-through normal~~.

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

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

24 (a) The Planning Department has determined that the actions contemplated in this
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. 091251 and is incorporated herein by reference.

3 (b) In March, 2008, San Francisco published its Citywide Development Impact Fee
4 Study Consolidated Report. The purpose of the Study was to evaluate the overall state,
5 effectiveness, and consistency of the City's impact fee collection process and to identify
6 improvements. Among other things, the Study cited the City's decentralized process as a
7 problem. Centralizing the collection of development impact and in-lieu fees within the
8 Department of Building Inspection, providing for an auditing and dispute-resolution function
9 within DBI, generating a single record listing all the impact and in-lieu fees that the City
10 assesses on development projects, and providing Project Development Fee Reports to project
11 sponsors and the public listing fees owed for individual development projects will further the
12 City's goals of streamlining the process, ensuring that fees are accurately assessed and
13 collected in a timely manner, informing the public of the fees assessed and collected, and
14 implementing suggestions contained in the Consolidated Report.

15 (c) The City assesses a variety of development fees on land-use development
16 projects; the timing for collection of these fees varies. Also, typical economic cycles create
17 volatility in the building and construction industries that has negative impacts on the
18 availability of financing, greatly affecting the viability of a range of development projects. The
19 current global economic crisis has exceeded both the depth and breadth of typical economic
20 downturns. These boom-and-bust economic cycles create financial and other hardships for
21 both project sponsors and the City's permit-issuing departments.

22 By enacting this procedure to standardize the collection and timing of payment of
23 development impact and in-lieu fees assessed by the City and give the project sponsor the
24 option to defer payment of the fees, the City intends not only to streamline the process but
25 also to mitigate the financial hardships caused by economic cycles in general and the current

1 global economic crisis in particular. This will allow project sponsors to proceed to obtain
2 entitlements for development projects that would otherwise be unable to proceed under
3 adverse economic conditions and enable a better-managed economic recovery.

4 Section 2. The San Francisco Building Code is hereby amended by adding Section
5 107A.13, to read as follows:

6 107A.13 Development Impact and In-Lieu Fees.

7 107A.13.1 Definitions. (a) The following definitions shall govern interpretation of this Section:

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

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

10 (3) "Development fee" shall mean either a development impact fee or an in-lieu fee. It shall
11 not include a fee for service or any time and material charges charged for reviewing or processing
12 permit applications.

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

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

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

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

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

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

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

15 (11) "Unit" shall mean the Department's Development Fee Collection Unit.

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

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

1 (a) All development impact or in-lieu fees owed for a development project shall be paid by
2 the project sponsor prior to issuance of the first construction document; provided, however, that the
3 project sponsor may elect to defer payment of said fees under Section 107A.13.3.1.

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

6 107A.13.3.1 Option to defer payment; deferral surcharge. A project sponsor may elect to defer
7 payment of any development impact or in-lieu fee collected by the Department to a due date prior to
8 issuance by the Department of the first certificate of occupancy. This option may be exercised by (1)
9 submitting a deferral request to the Department on a form provided by the Department prior to
10 issuance of the first construction document, and (2) agreeing to pay a Development Fee Deferral
11 Surcharge. The option to defer payment of a development fee shall not be available to a project sponsor
12 who paid the fee prior to the operative date of May 15, 2010, and shall expire three years from May 15,
13 2010 unless the Board of Supervisors extends it.

14 The Development Fee Deferral Surcharge shall be paid when the deferred fees are paid prior to
15 issuance of the first certificate of occupancy, and shall accrue at the Development Fee Deferral
16 Surcharge Rate. The Development Fee Deferral Surcharge Rate shall be calculated monthly by the
17 San Francisco Treasurer's Office as a blended interest rate comprised of 50% of the Treasurer's yield
18 on a standard two-year investment and 50% of the Annual Infrastructure Construction Cost Inflation
19 Estimate published by the Office of the City Administrator's Capital Planning Group and approved by
20 the City's Capital Planning Committee consistent with its obligations under Section 409(b) of the San
21 Francisco Planning Code. The Treasurer's yield on a standard two-year investment shall be 60% of
22 the Two-Year U.S. FNMA Sovereign Agency Note Yield-to-Maturity and 40% of the Current Two-Year
23 U.S. Treasury Note Yield-to-Maturity as quoted from the close of business on the last open market day
24 of the month previous to the date when a project sponsor elects to defer the development fees owed on a
25 development project. The annual Infrastructure Construction Cost Inflation Estimate shall be updated

1 by the Office of the City Administrator's Capital Planning Group on an annual basis, in consultation
2 with the Capital Planning Committee, with the goal of establishing a reasonable estimate of
3 construction cost inflation for the next calendar year for a mix of public infrastructure and facilities in
4 San Francisco. The Capital Planning Group may rely on past construction cost inflation data, market
5 trends, and a variety of national, state and local commercial and institutional construction cost
6 inflation indices in developing their annual estimates for San Francisco. The San Francisco
7 Treasurer's Office shall publish the blended rate on its website at the beginning of each month,
8 commencing on March 1, 2010. The accrual of any deferred development fees begins on the first day
9 that a project sponsor elects to defer development fees, but never later than immediately after issuance
10 of the first construction document. The Development Fee Collection Unit shall calculate the final
11 Development Fee Deferral Surcharge by multiplying the total development fees otherwise due prior to
12 issuance of the construction document by the Development Fee Deferral Surcharge Rate by the actual
13 day count of the entire Development Fee Deferral Period, which shall be the number of days between
14 the project sponsor's election to defer to final payment of the deferred development fees. The
15 Development Fee Deferral Surcharge shall be apportioned among all development fee funds according
16 to the ratio of each development fee as a percentage of the total development fees owed on the specific
17 project.

18 107A.13.4 Development Fee Collection Unit. There shall be a Development Fee Collection
19 Unit established within the Department. The Unit's duties include: (1) receiving and organizing
20 information from various City agencies concerning the amount of development fees owed or specific
21 development impact requirements imposed under various sections of the San Francisco Municipal
22 Code or other legal authority, (2) working with the project sponsor and relevant agencies to resolve
23 any disputes or questions concerning the development fees or development impact requirements
24 applied to specific development projects, (3) ensuring that the first construction document, or first
25 certificate of occupancy if the project sponsor elects to defer payment, is not issued prior to payment of

1 all development fees that are due and owing, (4) confirming with the Planning Department that any
2 outstanding development impact requirements are satisfied prior to issuance of the first certificate of
3 occupancy for projects subject to such requirements, (5) generating Project Development Fee Reports,
4 (6) processing any development fee refunds, (7) publishing and updating the Citywide Development
5 Fee Register, (8) initiating lien proceedings to collect any unpaid development impact or in-lieu fees,
6 and (9) performing such other duties as the Building Official requires. The fee for the Department's
7 services shall be as provided in Section 107A.13.14.

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

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

24 107A.13.7 Project Development Fee Report. Prior to the issuance of the building or site
25 permit for a development project that owes a development fee or fees or is subject to development

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

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

1 107A.13.9 Development fee dispute resolution; appeal to Board of Appeals.

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

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

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

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

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

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

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

18 107A.13.10 Violation of this Section deemed a violation of the Building Code. In addition to
19 the lien proceedings authorized by Section 107A.13.14, a violation of this Section 107A.13 shall be
20 deemed a violation of the Building Code and subject to the provisions of Section 103A and any
21 investigation or other fees authorized under other sections of this Code to compensate the Department
22 for the cost of abating violations.

23 107A.13.11 Development fee refunds. Upon notification by the property owner or project
24 sponsor and confirmation by the applicable department or agency that a fee refund is due, the Unit
25

1 shall process the refund. The fee for processing the refund shall be as set forth in Table 1A-D – Other
2 Building Permit and Plan Review Fees.

3 107A.13.12 Development fee information a public record. Any notice of development fees due
4 or development impact requirements imposed sent to the Development Collection Unit by any fee-
5 assessing departments and agencies, the Project Development Fee Report issued by the Unit, and any
6 development fee refunds or development impact requirement revisions made are a matter of public
7 record.

8 107A.13.13 Administrative fee. The fee for services provided by the Department under this
9 Section 107A.13 shall be the Standard Hourly Rate for Administration set forth in Table 1A-D of this
10 Code . The administrative fee is payable within 30 days' of the Department's notice that payment is
11 due.

12 107A.13.14 Administrative procedures. The Building Official is empowered to adopt such
13 administrative procedures as he or she deems necessary to implement this Section. Such administrative
14 procedures shall be generally consistent with the procedural requirements set forth in this Section
15 107A.

16 107A.13.15 Wrongful Issuance of First Construction Document or Certificate of Occupancy;
17 assessment lien; notice. In addition to any other remedy established in this Code or under other
18 authority under the laws of the State of California, if DBI inadvertently or mistakenly issues the first
19 construction document or first certificate of occupancy, whichever applies, for a development project
20 that has not paid a development fee that is due and owing and payment has not been received within 30
21 days following notice that payment is due, or, in the case where a sponsor has elected to satisfy a
22 development impact requirement through direct provision of physical improvements and where non-
23 compliance with any such requirement is not corrected within 30 days following notice, the Department
24 shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco
25 Administrative Code to make the entire unpaid balance of the fee that is due, including interest at the

1 rate of one and one-half percent per month or fraction thereof on the amount of unpaid fee, a lien
2 against all parcels used for the development project. The penalty fee provisions of this section shall
3 also apply to projects that have elected to provide physical improvements in lieu of paying a
4 development fee, as if they had elected to pay the relevant development fee.

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

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

20 Except for the release of the lien recording fee authorized by Administrative Code Section
21 10.237, all sums collected by the Tax Collector under this Section shall be held in trust by the
22 Treasurer and deposited in the City's appropriate fee account.

23
24 Section 3. Operative Date. The operative date of this ordinance shall be May 15, 2010.

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

3 By: _____
4 JUDITH A. BOYAJIAN
5 Deputy City Attorney
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