[Transit Impact Development Fee]

Ordinance repealing San Francisco Administrative Code Chapter 38 (Transit Impact Development Fee) and replacing it with a new Chapter 38 (Sections 38.1 through 38.14), to enact a new Transit Impact Development Fee.

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

Section 1. The San Francisco Administrative Code is hereby amended by repealing Chapter 38 in its entirety; provided, however, that any sponsor who has been issued a building or site permit to develop office use that was subject to the Transit Impact Development Fee imposed by Ordinance No. 224-81, as amended, shall remain subject to all the terms and conditions of that ordinance, as amended. Chapter 38 of the Administrative Code shall be replaced with a new Chapter 38 to read as follows:

SEC. 38.1. DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply:

A. Accessory Use. A related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to any such use and is located on the same lot as the principal or conditional use.

B. Base Service Standard. The relationship between revenue service hours offered by the Municipal Railway and the number of automobile and transit trips estimated to be generated by certain non-residential uses, expressed as a ratio where the numerator equals the average daily revenue service hours offered by MUNI, and the denominator equals the daily automobile and transit trips generated by non-residential land uses as estimated by the TIDF Study or updated under Section 38.7 of this ordinance.

C. Base Service Standard Fee Rate. The transit impact development fee that would allow the City to recover the estimated costs incurred by the Municipal Railway to meet the demand for public transit resulting from new development in the economic activity categories for which the fee is charged, after deducting government grants, fare revenue, and costs for non-vehicle maintenance and general administration.

D. Board. The Board of Supervisors of the City and County of San Francisco.

E. Certificate of Final Completion and Occupancy. A certificate of final completion and occupancy issued by any authorized entity or official of the City, including the Director of the Department of Building Inspection, under the Building Code.

F. City. The City and County of San Francisco.

G. Covered Use. Any use subject to the TIDF.

H. Cultural/Institution/Education (CIE). An economic activity category that includes, but is not limited to, schools, as defined in subsections (g), (h), and (i) of Section 209.3 of the Planning Code and subsections (f) - (i) of Section 217 of the Planning Code; child care facilities, as defined in subsections (e) and (f) of Section 209.3 of the Planning Code and subsection (e) of Section 217 of the Planning Code; museums and zoos; and community facilities, as defined in Section 209.4 of the Planning Code and subsections (a) – (c) of Section 221 of the Planning Code.

I Director. The Director of Transportation of the MTA, or his or her designee.

J. Economic Activity Category. One of the following six categories of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair (PDR), Retail/Entertainment, and Visitor Services.

K. Gross Floor Area. The total area of each floor within the building's exterior walls, as defined in Section 102.9 of the San Francisco Planning Code.

L. Gross Square Feet of Use. The total square feet of gross floor area in a building and/or space within or adjacent to a structure devoted to all covered uses, including any common areas exclusively serving such uses and not serving residential uses. Where a structure contains more than one use, areas common to two or more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary space included in gross floor area that are not exclusively assigned to one use shall be apportioned among the two or more uses in accordance with the relative amounts of gross floor area, excluding such space, in the structure or on any floor thereof directly assignable to each use.

M. Management, Information and Professional Services (MIPS). An economic activity category that includes, but is not limited to, office use as defined in Section 313.1(35) of the Planning Code; medical offices and clinics, as defined in Section 890.114 of the Planning Code; and business services, as defined in Section 890.111 of the Planning Code.

N. Medical and Health Services. An economic activity category that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and 217(a) of the Planning Code; animal services, as defined in subsections (a) and (b) of Section 224 of the Planning Code; and social and charitable services, as defined in subsection (d) of Section 209.3 of the Planning Code and subsection (d) of Section 217 of the Planning Code.

O. Municipal Railway; MUNI. The public transit system owned by City and under the jurisdiction of the Municipal Transportation Agency.

P. Municipal Transportation Agency; MTA. The agency of City created under Article 8A of the San Francisco Charter.

Q. Municipal Transportation Agency Board of Directors; MTA Board. The governing board of the MTA.

R. New Development. Any new construction, or addition to or conversion of an existing structure under a building or site permit issued after the effective date of this ordinance that results in 3,000 gross square feet or more of a covered use. In the case of mixed use development that includes residential development, the term "new development" shall refer to only the non-residential portion of such development. "Existing structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.

S. Planning Code. The Planning Code of the City and County of San Francisco, as it may be amended from time to time.

T. Production/Distribution/Repair (PDR). An economic activity category that includes, but is not limited to, manufacturing and processing, as defined in Section 226 of the Planning Code; those uses listed in Section 222 of the Planning Code; automotive services, as defined in Section 223(a) - (k) of the Planning Code; arts activities and spaces, as defined in Section 102.2 of the Planning Code; and research and development, as defined in Section 313.1(42) of the Planning Code.

U. Residential. Any type of use containing dwellings as defined in Section 209.1 of the Planning Code or containing group housing as defined in Section 209.2(a) - (c) of the Planning Code.

V. Retail/Entertainment. An economic activity category that includes, but is not limited to, retail use, as defined in Section 218 of the Planning Code; entertainment use, as defined in Section 313.1(15) of the Planning Code; massage establishments, as defined in Section 218.1 of the Planning Code; laundering, cleaning and pressing, as defined in Section 220 of the Planning Code; and wholesale sales, as defined in Section 890.54(b) of the Planning Code.

W. Revenue Service Hours. The number of hours that the Municipal Railway provides service to the public with its entire fleet of buses, light rail (including streetcars), and cable cars.

X. Sponsor. An applicant seeking approval for construction of new development subject to this Chapter, such applicant's successors and assigns, and/or any person or entity that controls or is under common control with such applicant.

Y. TIDF Study. The study commissioned by the San Francisco Planning Department and performed by Nelson/Nygaard Associates entitled "Transit Impact Development Fee Analysis - Final Report," dated May 2001, including all the Technical Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained in Board of Supervisors File No. 040141.

Z. Transit Impact Development Fee; TIDF. The development fee that is the subject of this ordinance.

AA. Treasurer. Treasurer of the City and County of San Francisco.

BB. Trip Generation Rate. The total number of automobile and Municipal Railway trips generated for each 1,000 square feet of development in a particular economic activity category as established in the TIDF Study, or pursuant to the five-year review process established in Section 38.7 of this ordinance.

CC. Use. The purpose for which land or a structure, or both, are legally designed, constructed, arranged or intended, or for which they are legally occupied or maintained, let or leased.

DD. Visitor Services. An economic activity category that includes, but is not limited to, hotel use, as defined in Section 313.1(18) of the Planning Code; motel use, as defined in subsections (c) and (d) of Section 216 of the Planning Code; and time-share projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

SEC. 38.2. FINDINGS.

A. In 1981, the City enacted an ordinance imposing a Transit Impact Development Fee ("TIDF") on new office development in the Downtown area of San Francisco. The ordinance established a rate of $5.00 for each square foot of new office development. The TIDF was based on studies showing that the development of new office uses places a burden on the Municipal Railway, especially in the downtown area of San Francisco during commute hours, known as "peak periods." The TIDF was based on two cost analyses: one by the Finance Bureau of the City's former Public Utilities Commission, performed in 1981, and one by the accounting firm of Touche-Ross, performed in March 1983 to defend a legal challenge to the TIDF. The studies showed that the cost per square foot of new office development to provide public transit service was $9.18 and $8.36, respectively. The California Court of Appeal upheld the TIDF ordinance against legal challenges in *Russ Bldg. Partnership v. City and County of San Francisco*, 199 Cal.App.3d 1496 (1987), reprinted as directed by the California Supreme Court in *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal.3d 839, 845-55 (1988). Among other things, the Court of Appeal found that the TIDF was a valid condition of development of real property, and not a special tax requiring voter approval. The Court also upheld the TIDF against equal protection and substantive due process challenges. Additionally, the California Supreme Court upheld the constitutionality of the TIDF as applied to development of new office uses approved before passage of the TIDF ordinance, where the City had conditioned approval of the new development on the developer's payment of a contemplated, but yet unknown, transit mitigation fee.

B. In 2000, the City's Planning Department, with assistance from the Municipal Transportation Agency, commissioned a study of the TIDF. The Planning Department issued a request for proposals for a consultant to consider various issues involving the TIDF, including: (1) whether the TIDF should be expanded to include types of land uses in addition to offices; (2) whether the TIDF should be expanded geographically beyond the Downtown area; (3) whether fee amounts should vary by geographic or land use categories; (4) what standards should be used for measuring the baseline performance of the Municipal Railway

("MUNI"); and (5) the developer fees that would be necessary to fund public transit to meet the additional demand resulting from new development.

C. In 2001, the Planning Department selected Nelson/Nygaard Associates, a nationally recognized transportation consulting firm, to perform the study. Later in 2001, Nelson/Nygaard issued its final report ("TIDF Study"). Before issuing the TIDF Study, Nelson/Nygaard prepared several Technical Memoranda, which provided detailed analyses of the methodology and assumptions used in the TIDF Study.

D. The TIDF Study concluded that new non-residential uses in San Francisco will generate demand for a substantial number of auto and transit trips ~~on MUNI~~ by the year 2020. The TIDF Study confirmed that while new office construction will ~~generate~~ have a substantial ~~demand for~~ impact on MUNI services, new development in a number of other land uses will ~~generate more trips on~~ also require MUNI to increase the number of revenue service hours. The TIDF Study recommended that the TIDF be extended to apply to most non-residential land uses ~~to address the increased demand for impact on public transportation~~. The TIDF Study found that certain types of new development generate very few daily ~~transit~~ trips and therefore may not appropriately be charged a new TIDF.

E. The TIDF Study also determined that the need to expand MUNI services to accommodate new development extends to all times of the day, not just peak periods, and therefore recommended that any measure of the existing level of service and additional service required by new development include service at all times of the day.

F. The former TIDF Ordinance applied the fee to developments in the traditional "Downtown" area of the City. The TIDF Study noted that since 1981, however, development has expanded out of the Downtown area of the City, and that such development has required MUNI to build transit infrastructure in areas outside of the boundary defined in the former TIDF Ordinance.

G. To meet the increased demand for public transit projected by the TIDF Study, MUNI must build new infrastructure and add or adjust service. For example, MUNI's 2002 publication, "A Vision for Rapid Transit in San Francisco" ("Vision Plan"), proposes transit projects along 12 major corridors in San Francisco, covering all areas of the City.

H. Even where employees and others drawn to new development use private transportation, their trips will increase the cost of maintaining MUNI's existing service level ("base service standard") because increasing traffic congestion will result in slower travel speeds for MUNI and require MUNI to add more service hours to maintain its base service standard Accordingly, new development will require MUNI to add service hours to maintain schedules and reliability that extends beyond the new riders seeking to use MUNI service.

I. New development will directly and indirectly require MUNI to (a) maintain and expand service capacity through adding revenue service hours; (b) purchase, maintain and repair rolling stock; (c) install new lines; and (d) add service to existing lines.

J. The TIDF Study recommended that the City enact an ordinance to impose transit impact fees that would allow MUNI to maintain its base service standard as new development occurs throughout the City. The proposed ordinance would require sponsors of new development in the City to pay a fee that is reasonably related to the financial burden imposed on MUNI by the new development. This financial burden is measured by the cost that will be incurred by MUNI to provide increased service to maintain the applicable base service standard over the life of such new development.

K. The TIDF Study expressed the base service standard as a ratio in which the numerator is the number of hours that MUNI provides service to the public on its entire fleet of vehicles ("revenue service hours"), and the denominator is the number of trips generated by all non-residential land uses. An increase in trips resulting from new non-residential development will reduce the ratio of revenue service hours to overall trips generated by new development. To maintain the base service standard to accommodate the new development, MUNI must increase revenue service hours.

L. The TIDF Study developed a daily trip generation rate for each of six economic activity categories developed in the "Citywide Land Use Study," prepared for the Planning Department in 1998. The daily trip generation rate included automobile and public transit trips, but excluded non-motorized trips because such trips do not materially affect traffic congestion. The TIDF Study determined that the trip generation rates in each economic activity category do not vary geographically within the City. Therefore, the TIDF Study concluded that developer fee rates should not vary in different districts within the City. The trip generation rates contained in the TIDF Study represent the most reasonable rates available for the economic activity categories in the Study.

M. Using data obtained from MUNI and the fiscal year 2000 National Transit Database, the TIDF Study calculated the base service standard fee rates for each of the six economic activity categories in the following way:

(1) To calculate MUNI's total annual costs, the TIDF Study combined MUNI's fiscal year 2000 operating costs with an average annual capital budget, estimated by averaging the prior five years of MUNI's capital expenditures.

FY 2000 Operating Costs	$384,113,000
Average Annual Capital Costs	$310,000,000
Total Annual Costs	$694,113,000

(2) The Study calculated MUNI's net annual costs for fiscal year 2000 by subtracting fare box revenue and federal and state grant funds from MUNI's total costs.

Total Annual Costs	$ 694,113,000
FY 2000 Fare Box Revenue	($101,310,000)
FY 2000 Federal/State Grant Funds	($182,900,000)
Net Annual Costs	$ 409,903,000

(3) The Study then determined MUNI's net annual cost per revenue service hour by dividing MUNI's net annual costs by MUNI's average daily revenue service hours, as reported to the National Transit Database.

Net Annual Costs	Average Daily Revenue Service Hours	Net Annual Cost Per Revenue Service Hour
$ 409,903,000	÷ 8,436	$48,600

(4) The TIDF Study estimated the number of daily auto and transit trips within the City (9,035,282) by using trip generation rates and 2000 employment data supplied by the Planning Department. By dividing MUNI's average daily revenue service hours (8,436) by the estimated daily auto and transit trips within the City (9,035,282), the TIDF Study determined that MUNI provided approximately 0.9336 service hours for every 1,000 transit and auto trips. The TIDF Study multiplied the net annual cost per revenue service hour by 0.9336 to determine a net annual cost per trip.

Net Annual Cost Per Revenue Service Hour	Revenue Service Hours Per 1,000 Trips	Net Annual Cost Per Trip
$48,600	x 0.9336	$45.37

(5) The Study multiplied the net annual cost per trip by an adjusted daily trip rate per economic activity category to calculate a net annual cost per gross square foot (gsf) of new development for each economic activity category. The TIDF Study adjusted the daily trip rate to eliminate bicycle and pedestrian trips.

Economic Activity Category	Adjusted Daily Trip Rate Per 1,000 gsf	Net Annual Cost Per Trip	Net Annual Cost per gsf of Development
Cultural/Institution/Education	42.3	$45.37	$1.92
Management, Information and Professional Services	15.1	$45.37	$0.68
Medical and Health Services	23.9	$45.37	$1.08
Production/Distribution/Repair	9.6	$45.37	$0.44
Retail/Entertainment	166.8	$45.37	$7.57
Visitor Services	13.3	$45.37	$0.61

(6) Finally, the Study multiplied the net annual cost per gross square foot of development for each economic activity category by a net present value factor of 20.69 (based on a U.S. transportation industry index inflation rate of 2.05%, earning on an invested funds rate of 6.14%, and a building life span of 45 years) to establish the base service standard rates for each economic activity category that would be necessary to pay for increased transit services for the 45-year useful life of a new development.

Economic Activity Category	Net Present Value Factor	Net Annual Cost per gsf of Development	Base Service Standard Rates
Cultural/Institution/Education	20.69	$1.92	$39.67
Management, Information and Professional Services	20.69	$0.68	$14.17
Medical and Health Services	20.69	$1.08	$22.40
Production/Distribution/Repair	20.69	$0.44	$9.04
Retail/Entertainment	20.69	$7.57	$156.61
Visitor Services	20.69	$0.61	$12.53

N. In 2004, MUNI updated the base service standard rates established in the TIDF Study with fiscal year 2003 data (the "updated base service standard rates"). To calculate the updated base service standard rates, MUNI modified certain variables in the TIDF Study's formula to reflect current information, as follows.

(1) Rather than using an estimated average annual capital budget (the methodology employed in the TIDF Study), MUNI used its actual capital costs for fiscal years 1999-2003, as reported to the fiscal year 2003 National Transit Database, in determining the average annual capital costs.

Operating Costs	$449,283,888
Average Capital Costs	$192,468,200
Total Costs	$641,752,088

(2) California Government Code Section 65913.8 prohibits including costs for facility maintenance and operations in a fee imposed on a developer for a public capital facility improvement. It is not clear whether this limitation applies to the TIDF. To comply with Government Code Section 65913.8, if applicable, and to achieve a more conservative estimate of the recoverable costs, MUNI deducted its costs for non-vehicle (facility) maintenance and general administration. MUNI could not separate general administration attributable to facility operations, so MUNI deducted 100% of the general administration costs for the entire department. Accordingly, the updated base service standard rates are even more conservative than may be required under Section 65913.8.

(3) MUNI applied its updated assumptions to the TIDF Study's methodology by deducting non-vehicle maintenance and general administration (in addition to farebox revenues and grant funds) from its total costs to calculate its annual net costs:

Total Annual Costs FY 2003	$ 641,752,088
Farebox Revenue FY 2003	($97,779,333)
Federal/State Grant Funds FY 2003	($89,445,000)
Non-Vehicle Maintenance FY 2003	($34,173,560)
General Administration FY 2003	($92,197,116)
Net Annual Costs FY 2003	$ 328,157,079

(4) To determine the net annual cost per revenue service hour, MUNI used the average daily revenue service hours for Fiscal Year 2003 (10,062), as reported to the National Transit Database:

Net Annual Costs	Average Daily Revenue Service Hours	Net Annual Cost Per Revenue Service Hour
$ 328,157,079	÷ 10,062	$32,614

(5) MUNI then calculated the net annual cost per trip by multiplying the net annual cost per revenue service hour by the number of revenue service hours per 1,000 trips:

Net Annual Cost Per Revenue Service Hour	Revenue Service Hours Per 1,000 Trips	Net Annual Cost Per Trip
$32,614	x 1.1136	$36.32

(6) MUNI multiplied the net annual cost per trip by the adjusted daily trip rate for each economic activity category to arrive at a net annual cost per gross square foot of new development for each category:

Economic Activity Category	Adjusted Daily Trip Rate Per 1,000 gsf	Net Updated Annual Cost Per Trip	Net Updated Annual Cost per gsf of Development
Cultural/Institution/Education	42.3	$36.32	$1.54
Management, Information and Professional Services	15.1	$36.32	$0.55
Medical and Health Services	23.9	$36.32	$0.87
Production/Distribution/Repair	9.6	$36.32	$0.35
Retail/Entertainment	166.8	$36.32	$6.06
Visitor Services	13.3	$36.32	$0.48

(7) MUNI also updated the net present value factor the TIDF Study used to calculate the updated base service standard rates by calculating the lump sum amount needed to fund $1.00 (in today's dollars) in annual costs over 45 years, increasing at a current inflation rate of 3.50% (the five-year Bay Area Consumer Price Index as calculated by the Association for Bay Area Governments), with the remaining fund balance invested at a current interest rate of 4.93% (the five-year average interest rate earned by the City's Treasurer's Department on pooled funds). Both the TIDF Study and MUNI used the interest rate earned by the City's Treasurer for the respective years. But MUNI elected to use the Bay Area Consumer Price Index rather than the U.S. Transportation Index on which the TIDF Study relied because the Bay Area index more accurately reflects the local inflation rate. The use of the different net present value factor yields the following updated base service standard rates:

Economic Activity Category	Net Annual Cost per gsf of Development	Net Present Value Factor	Updated Base Service Standard Rates
Cultural/Institution/ Education	$1.54	33.36	$51.25
Management, Information and Professional Services	$0.55	33.36	$18.30
Medical and Health Services	$0.87	33.36	$28.96
Production/Distribution/Repair	$0.35	33.36	$11.63
Retail/Entertainment	$6.06	33.36	$202.10
Visitor Services	$0.48	33.36	$16.11

O. In setting the TIDF rates, the City considered the updated base service standard rates and input from a variety of stakeholders, including business groups, developers, and civic organizations. The City set the TIDF rates well below the updated base service standard rates to reduce the costs of the TIDF to sponsors of new developments, who are subject to other development fees imposed by the City, and to guarantee that the TIDF does not exceed the reasonable cost to fund the additional transit improvements necessitated by new development. The TIDF rates are as follows:

Economic Activity Category	Updated Base Service Standard Rates	TIDF Schedule (from Sec. 38.4)
Cultural/Institution/Education	$51.25	$10.00
Management, Information and Professional Services	$18.30	$10.00
Medical and Health Services	$28.96	$10.00
Production/Distribution/Repair	$11.63	$8.00
Retail/Entertainment	$202.10	$10.00
Visitor Services	$16.11	$8.00

P. Based on projected new development over the next 20 years, the TIDF will provide revenue to MUNI that is significantly below the costs that MUNI will incur to mitigate the transit impacts resulting from the new development.

Q. The TIDF is the most practical and equitable method of meeting a portion of the demand for additional Municipal Railway service and capital improvements for the City caused by new non-residential development.

R. Based on the above findings, the City determines that the TIDF satisfies the requirements of the Mitigation Fee Act, California Government Code Section 66001, as follows:

(1) The purpose of the fee is to meet a portion of the demand for additional Municipal Railway service and capital improvements for the City caused by new non-residential development.

(2) Funds from collection of the TIDF will be used to increase revenue service hours reasonably necessary to mitigate the impacts of new non-residential development on public transit and maintain the applicable base service standard.

(3) There is a reasonable relationship between the proposed uses of the TIDF and the impact on transit of the new developments on which the TIDF will be imposed.

(4) There is a reasonable relationship between the types of new development on which the TIDF will be imposed and the need to fund public transit for the uses specified in Section 38.8 of this ordinance.

(5) There is a reasonable relationship between the amount of the TIDF to be imposed on new developments and the impact on public transit from the new developments.

SEC. 38.3. IMPOSITION OF TRANSIT IMPACT DEVELOPMENT FEE.

A. Subject to the exceptions set forth in subsections D and E below, each sponsor of a new development in the City shall pay to the City and deliver to the Treasurer upon issuance of any temporary certificate of occupancy, and as a condition precedent to issuance for such new development of any certificate of final completion and occupancy, whichever occurs first, a TIDF. The TIDF shall be calculated on the basis of the number of gross square feet of new development, multiplied by the square foot rate then in effect for each of the applicable economic activity categories within the new development, as provided in Section 38.4 of this ordinance. An accessory use shall be charged at the same rate as the underlying use to which it is accessory. Whenever any new development or series of new developments results in more than 3,000 gross square feet of covered use within a structure, the TIDF shall be imposed on every square foot of such covered use (including any portion that was part of prior new development below the 3,000 square foot threshold).

B. No City official or agency, including the Department of Building Inspection ("DBI") and the Port of San Francisco, may issue a certificate of final completion and occupancy for any new development subject to the TIDF until it has received notification from the Treasurer that the TIDF in accordance with Section 38.4 of this Chapter has been paid.

C. Except as provided in Sections 38.3(D) and (E) below, the TIDF shall be payable with respect to any new development in the City for which a building or site permit is issued on or after the effective date of this ordinance.

D. The TIDF shall not be payable on new development, or any portion thereof, for which a transit impact development fee has been paid, in full or in part, under the prior Transit Impact Development Fee Ordinance adopted in 1981 (Ordinance No. 224-81; former Chapter 38 of this Administrative Code), except where (1) gross square feet of use is being added to the building; or (2) the TIDF rate for the new development is in an economic activity category with a higher fee rate than the rate set for MIPS, as set forth in Section 38.4.

E. No TIDF shall be payable on the following types of new development.

(1) New development on property owned (including beneficially owned) by the City, except for that portion of the new development that may be developed by a private sponsor and not intended to be occupied by the City or other agency or entity exempted under this ordinance, in which case the TIDF shall apply only to such non-exempted portion. New

development on property owned by a private person or entity and leased to the City shall be subject to the fee, unless the City is the beneficial owner of such new development or unless such new development is otherwise exempted under this Section.

(2) Any new development in Mission Bay North or South to the extent application of this ordinance would be inconsistent with the Mission Bay North Redevelopment Plan and Interagency Cooperation Agreement or the Mission Bay South Redevelopment Plan and Interagency Cooperation Agreement, as applicable.

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

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

(5) New development for which an application for environmental evaluation <u>or an application for a categorical exemption</u> has been filed prior to April 1, 2004.

(6) The following types of new developments:

(a) Public facilities/ utilities, as defined in Section 209.6 of the Planning Code;

(b) Open recreation/horticulture, as defined in Section 209.5 of the Planning Code, including private noncommercial recreation open use, as referred to in Section 221(g) of the Planning Code;

(c) Vehicle storage and access, as defined in Section 209.7 of the Planning Code;

(d) Automotive services, as defined in Section 223(l) - (v) of the Planning Code;

(e) Wholesaling, storage, distribution, and open-air handling of materials and equipment, as defined in Section 225 of the Planning Code;

(f) Other Uses, as defined in Section 227 of the Planning Code;

In reviewing whether a development is subject to the fee, the Director shall consider the project in its entirety. A sponsor may not seek multiple building permits to evade paying the TIDF.

F. The sponsor shall pay, or cause to be paid, the TIDF to the Treasurer on the earliest of the following dates:

(1) The date when 50 percent of the net rentable area of the project has been occupied;

(2) The date of issuance of the first temporary permit of occupancy in the new development;

(3) Five days prior to the date of issuance of a final certificate of occupancy.

G. Upon payment of the fee in full to the Treasurer, and upon request of the sponsor, the Treasurer shall issue a certificate that the fee has been paid. The sponsor shall present such certification to DBI before the issuance of the final certificate of occupancy for the new development. DBI shall provide notice in writing to the Treasurer, the Planning Department, and MUNI at least five business days before issuing the final certificate of occupancy for any new development project. DBI may not issue a final certificate of occupancy for any new development until DBI has received notice from the Treasurer that the TIDF has been paid.

SEC. 38.4. TRANSIT IMPACT DEVELOPMENT FEE SCHEDULE.

A. TIDF Schedule. The TIDF Schedule shall be as follows:

Economic Activity Category	TIDF Per Gross Square Foot of Development
Cultural/Institution/Education	$10.00
Management, Information and Professional Services	$10.00
Medical and Health Services	$10.00
Production/Distribution/Repair	$8.00
Retail/Entertainment	$10.00
Visitor Services	$8.00

B. Biennial Adjustment. Biennially, beginning July 1, 2005, the TIDF Schedule shall be adjusted, without further action by the Board of Supervisors, to reflect the average annual change in the Bay Area Consumer Price Index for the prior two years, as reported by the Association of Bay Area Governments, and as determined by the Director.

SEC. 38.5. SETTING OF TIDF. Before obtaining the first building or site permit for any new development in the City after the effective date of this ordinance, each sponsor shall file with the Director, on such form as the Director may develop, a report indicating the number of gross square feet of use of the new development and any other information the Director may require to determine the sponsor's obligation to pay the TIDF. Each sponsor of a new development who had applied for a building or site permit, but who had not obtained an approval of the building permit or site permit before the effective date of this ordinance, shall file the same report prior to obtaining a final certificate of occupancy. Except where an exemption otherwise applies under this ordinance, the Director shall determine the number of gross square feet of use in each applicable economic activity category, disregarding the number of pre-existing gross square feet of use being retained in each such category, apply the fee schedule, and determine the fee. The Director shall mail a copy of his or her written determination to the sponsor. The sponsor may appeal the determination of the number of gross square feet of use subject to the fee, the economic activity category, or the credits described in Section 38.6, to the MTA Board. If the sponsor notifies the Director of its acceptance of the determination, or does not submit an appeal to the MTA Board within 15 days following the date of mailing of notice of the Director's determination, the Director's determination shall be final, and a notice of such determination shall be provided to DBI and the Treasurer. DBI may not issue a site or building permit for any new development until it has received notice from the MTA of the final determination of the amount of the Transit Impact Development Fee to be paid. The MTA shall not change the amount of the TIDF based on changes to the amount of gross square feet of new development during construction of the new development unless the sponsor applies for a new building permit to reflect such changes.

SEC. 38.6. CREDITS. In determining the number of gross square feet of use to which the TIDF applies, the Director shall provide a credit for prior uses eliminated on the site, provided that a TIDF has not been paid for any prior use of the property. The credit shall be calculated according to the following formula:

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

(1) The adjustment factor shall be a fraction, the numerator of which shall be the fee rate which the Director shall determine, in consultation with the Department of City Planning, if necessary, applies to the economic activity category in the most recent calculation of the TIDF Schedule approved by the MTA Board for the prior use being eliminated by the project.

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

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

(c) As of the effective date of this ordinance, no sponsor shall be entitled to a refund of the TIDF on a building for which the fee was paid under the former Chapter 38.

SEC. 38.7. REVIEW OF FEE SCHEDULE.

A. Five-Year Review.

(1) Commencing five years after the effective date of this ordinance, and every five years thereafter, or more often as the MTA Board may deem necessary, the Director shall prepare a report for the MTA Board and the Board of Supervisors with recommendations regarding whether the TIDF for each economic activity category should be increased, decreased, or remain the same. In making such recommendations, and to the extent that new information is available, the Director shall update the following information and estimates that were used in the TIDF Study to calculate the base service standard fee rates, and any other information that the Director deems appropriate.

(a) The base service standard;

(b) Capital and operating costs;

(c) Federal and state grant funds received by MUNI;

(d) Passenger fare revenue;

(e) Daily revenue service hours;

(f) Cost per revenue service hour;

(g) Trip generation rates by economic activity category;

(h) Cost per trip;

(i) Cost per gross square foot of development by economic activity category;

(j) Net present value factor;

(k) Useful life period(s) for new development by economic activity category;

(l) Estimated annual rate of return on the proceeds of the fee;

(m) The placement of particular land uses in economic activity categories.

Where applicable, the Director shall use the most recent MUNI information as submitted to the National Transit Database. The denominator of the revised base service standard shall be calculated using the most recent estimates of daily automobile and transit trips developed by the City's Planning Department or other City or state agency.

(2) In the report, the Director shall (a) identify the base service standard fee rates per gross square foot in each economic activity category; and (b) propose a fee for each economic activity category.

(3) After receiving this report and making it available for public distribution, the Board of Supervisors shall conduct a public hearing in which it shall consider the Director's report, hear testimony from any interested members of the public, and receive such other evidence as it may deem necessary. At the conclusion of that hearing, the Board shall make findings regarding whether the revenues projected to be recovered under the proposed Fee Schedule would be reasonably related to and would not exceed the costs incurred by MUNI to maintain the applicable base service standard, in light of demands caused by new development. The Board of Supervisors shall then make any necessary or appropriate revisions to the TIDF Schedule.

(4) The Board shall consider the Director's report in light of the most recent five-year review of the Housing Fee (Planning Code § 313.15), Child Care Fee (Planning Code § 314.7) and Inclusionary Housing Fee (Planning Code § 315.8(e)). MUNI and the

[Transit Impact Development Fee]

Ordinance repealing San Francisco Administrative Code Chapter 38 (Transit Impact Development Fee) and replacing it with a new Chapter 38 (Sections 38.1 through 38.14), to enact a new Transit Impact Development Fee.

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

Section 1. The San Francisco Administrative Code is hereby amended by repealing Chapter 38 in its entirety; provided, however, that any sponsor who has been issued a building or site permit to develop office use that was subject to the Transit Impact Development Fee imposed by Ordinance No. 224-81, as amended, shall remain subject to all the terms and conditions of that ordinance, as amended. Chapter 38 of the Administrative Code shall be replaced with a new Chapter 38 to read as follows:

SEC. 38.1. DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply:

A. Accessory Use. A related minor use which is either necessary to the operation or enjoyment of a lawful principal use or conditional use, or is appropriate, incidental and subordinate to any such use and is located on the same lot as the principal or conditional use.

B. Base Service Standard. The relationship between revenue service hours offered by the Municipal Railway and the number of automobile and transit trips estimated to be generated by certain non-residential uses, expressed as a ratio where the numerator equals the average daily revenue service hours offered by MUNI, and the denominator equals the daily automobile and transit trips generated by non-residential land uses as estimated by the TIDF Study or updated under Section 38.7 of this ordinance.

C. Base Service Standard Fee Rate. The transit impact development fee that would allow the City to recover the estimated costs incurred by the Municipal Railway to meet the demand for public transit resulting from new development in the economic activity categories for which the fee is charged, after deducting government grants, fare revenue, and costs for non-vehicle maintenance and general administration.

D. Board. The Board of Supervisors of the City and County of San Francisco.

E. Certificate of Final Completion and Occupancy. A certificate of final completion and occupancy issued by any authorized entity or official of the City, including the Director of the Department of Building Inspection, under the Building Code.

F. City. The City and County of San Francisco.

G. Covered Use. Any use subject to the TIDF.

H. Cultural/Institution/Education (CIE). An economic activity category that includes, but is not limited to, schools, as defined in subsections (g), (h), and (i) of Section 209.3 of the Planning Code and subsections (f) - (i) of Section 217 of the Planning Code; child care facilities, as defined in subsections (e) and (f) of Section 209.3 of the Planning Code and subsection (e) of Section 217 of the Planning Code; museums and zoos; and community facilities, as defined in Section 209.4 of the Planning Code and subsections (a) – (c) of Section 221 of the Planning Code.

I Director. The Director of Transportation of the MTA, or his or her designee.

J. Economic Activity Category. One of the following six categories of non-residential uses: Cultural/Institution/Education (CIE), Management, Information and Professional Services (MIPS), Medical and Health Services, Production/Distribution/Repair (PDR), Retail/Entertainment, and Visitor Services.

K. Gross Floor Area. The total area of each floor within the building's exterior walls, as defined in Section 102.9 of the San Francisco Planning Code.

L. Gross Square Feet of Use. The total square feet of gross floor area in a building and/or space within or adjacent to a structure devoted to all covered uses, including any common areas exclusively serving such uses and not serving residential uses. Where a structure contains more than one use, areas common to two or more uses, such as lobbies, stairs, elevators, restrooms, and other ancillary space included in gross floor area that are not exclusively assigned to one use shall be apportioned among the two or more uses in accordance with the relative amounts of gross floor area, excluding such space, in the structure or on any floor thereof directly assignable to each use.

M. Management, Information and Professional Services (MIPS). An economic activity category that includes, but is not limited to, office use as defined in Section 313.1(35) of the Planning Code; medical offices and clinics, as defined in Section 890.114 of the Planning Code; and business services, as defined in Section 890.111 of the Planning Code.

N. Medical and Health Services. An economic activity category that includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and 217(a) of the Planning Code; animal services, as defined in subsections (a) and (b) of Section 224 of the Planning Code; and social and charitable services, as defined in subsection (d) of Section 209.3 of the Planning Code and subsection (d) of Section 217 of the Planning Code.

O. Municipal Railway; MUNI. The public transit system owned by City and under the jurisdiction of the Municipal Transportation Agency.

P. Municipal Transportation Agency; MTA. The agency of City created under Article 8A of the San Francisco Charter.

Q. Municipal Transportation Agency Board of Directors; MTA Board. The governing board of the MTA.

R. New Development. Any new construction, or addition to or conversion of an existing structure under a building or site permit issued after the effective date of this ordinance that results in 3,000 gross square feet or more of a covered use. In the case of mixed use development that includes residential development, the term "new development" shall refer to only the non-residential portion of such development. "Existing structure" shall include a structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.

S. Planning Code. The Planning Code of the City and County of San Francisco, as it may be amended from time to time.

T. Production/Distribution/Repair (PDR). An economic activity category that includes, but is not limited to, manufacturing and processing, as defined in Section 226 of the Planning Code; those uses listed in Section 222 of the Planning Code; automotive services, as defined in Section 223(a) - (k) of the Planning Code; arts activities and spaces, as defined in Section 102.2 of the Planning Code; and research and development, as defined in Section 313.1(42) of the Planning Code.

U. Residential. Any type of use containing dwellings as defined in Section 209.1 of the Planning Code or containing group housing as defined in Section 209.2(a) - (c) of the Planning Code.

V. Retail/Entertainment. An economic activity category that includes, but is not limited to, retail use, as defined in Section 218 of the Planning Code; entertainment use, as defined in Section 313.1(15) of the Planning Code; massage establishments, as defined in Section 218.1 of the Planning Code; laundering, cleaning and pressing, as defined in Section 220 of the Planning Code; and wholesale sales, as defined in Section 890.54(b) of the Planning Code.

W. Revenue Service Hours. The number of hours that the Municipal Railway provides service to the public with its entire fleet of buses, light rail (including streetcars), and cable cars.

X. Sponsor. An applicant seeking approval for construction of new development subject to this Chapter, such applicant's successors and assigns, and/or any person or entity that controls or is under common control with such applicant.

Y. TIDF Study. The study commissioned by the San Francisco Planning Department and performed by Nelson/Nygaard Associates entitled "Transit Impact Development Fee Analysis - Final Report," dated May 2001, including all the Technical Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained in Board of Supervisors File No. 040141.

Z. Transit Impact Development Fee; TIDF. The development fee that is the subject of this ordinance.

AA. Treasurer. Treasurer of the City and County of San Francisco.

BB. Trip Generation Rate. The total number of automobile and Municipal Railway trips generated for each 1,000 square feet of development in a particular economic activity category as established in the TIDF Study, or pursuant to the five-year review process established in Section 38.7 of this ordinance.

CC. Use. The purpose for which land or a structure, or both, are legally designed, constructed, arranged or intended, or for which they are legally occupied or maintained, let or leased.

DD. Visitor Services. An economic activity category that includes, but is not limited to, hotel use, as defined in Section 313.1(18) of the Planning Code; motel use, as defined in subsections (c) and (d) of Section 216 of the Planning Code; and time-share projects, as defined in Section 11003.5(a) of the California Business and Professions Code.

SEC. 38.2. FINDINGS.

A. In 1981, the City enacted an ordinance imposing a Transit Impact Development Fee ("TIDF") on new office development in the Downtown area of San Francisco. The ordinance established a rate of $5.00 for each square foot of new office development. The TIDF was based on studies showing that the development of new office uses places a burden on the Municipal Railway, especially in the downtown area of San Francisco during commute hours, known as "peak periods." The TIDF was based on two cost analyses: one by the Finance Bureau of the City's former Public Utilities Commission, performed in 1981, and one by the accounting firm of Touche-Ross, performed in March 1983 to defend a legal challenge to the TIDF. The studies showed that the cost per square foot of new office development to provide public transit service was $9.18 and $8.36, respectively. The California Court of Appeal upheld the TIDF ordinance against legal challenges in *Russ Bldg. Partnership v. City and County of San Francisco*, 199 Cal.App.3d 1496 (1987), reprinted as directed by the California Supreme Court in *Russ Bldg. Partnership v. City and County of San Francisco*, 44 Cal.3d 839, 845-55 (1988). Among other things, the Court of Appeal found that the TIDF was a valid condition of development of real property, and not a special tax requiring voter approval. The Court also upheld the TIDF against equal protection and substantive due process challenges. Additionally, the California Supreme Court upheld the constitutionality of the TIDF as applied to development of new office uses approved before passage of the TIDF ordinance, where the City had conditioned approval of the new development on the developer's payment of a contemplated, but yet unknown, transit mitigation fee.

B. In 2000, the City's Planning Department, with assistance from the Municipal Transportation Agency, commissioned a study of the TIDF. The Planning Department issued a request for proposals for a consultant to consider various issues involving the TIDF, including: (1) whether the TIDF should be expanded to include types of land uses in addition to offices; (2) whether the TIDF should be expanded geographically beyond the Downtown area; (3) whether fee amounts should vary by geographic or land use categories; (4) what standards should be used for measuring the baseline performance of the Municipal Railway

("MUNI"); and (5) the developer fees that would be necessary to fund public transit to meet the additional demand resulting from new development.

C. In 2001, the Planning Department selected Nelson/Nygaard Associates, a nationally recognized transportation consulting firm, to perform the study. Later in 2001, Nelson/Nygaard issued its final report ("TIDF Study"). Before issuing the TIDF Study, Nelson/Nygaard prepared several Technical Memoranda, which provided detailed analyses of the methodology and assumptions used in the TIDF Study.

D. The TIDF Study concluded that new non-residential uses in San Francisco will generate demand for a substantial number of auto and transit trips ~~on MUNI~~ by the year 2020. The TIDF Study confirmed that while new office construction will ~~generate~~ have a substantial ~~demand for~~ impact on MUNI services, new development in a number of other land uses will ~~generate more trips on~~ also require MUNI to increase the number of revenue service hours. The TIDF Study recommended that the TIDF be extended to apply to most non-residential land uses ~~to address the increased demand for impact on public transportation~~. The TIDF Study found that certain types of new development generate very few daily ~~transit~~ trips and therefore may not appropriately be charged a new TIDF.

E. The TIDF Study also determined that the need to expand MUNI services to accommodate new development extends to all times of the day, not just peak periods, and therefore recommended that any measure of the existing level of service and additional service required by new development include service at all times of the day.

F. The former TIDF Ordinance applied the fee to developments in the traditional "Downtown" area of the City. The TIDF Study noted that since 1981, however, development has expanded out of the Downtown area of the City, and that such development has required MUNI to build transit infrastructure in areas outside of the boundary defined in the former TIDF Ordinance.

G. To meet the increased demand for public transit projected by the TIDF Study, MUNI must build new infrastructure and add or adjust service. For example, MUNI's 2002 publication, "A Vision for Rapid Transit in San Francisco" ("Vision Plan"), proposes transit projects along 12 major corridors in San Francisco, covering all areas of the City.

H. Even where employees and others drawn to new development use private transportation, their trips will increase the cost of maintaining MUNI's existing service level ("base service standard") because increasing traffic congestion will result in slower travel speeds for MUNI and require MUNI to add more service hours to maintain its base service standard Accordingly, new development will require MUNI to add service hours to maintain schedules and reliability that extends beyond the new riders seeking to use MUNI service.

I. New development will directly and indirectly require MUNI to (a) maintain and expand service capacity through adding revenue service hours; (b) purchase, maintain and repair rolling stock; (c) install new lines; and (d) add service to existing lines.

J. The TIDF Study recommended that the City enact an ordinance to impose transit impact fees that would allow MUNI to maintain its base service standard as new development occurs throughout the City. The proposed ordinance would require sponsors of new development in the City to pay a fee that is reasonably related to the financial burden imposed on MUNI by the new development. This financial burden is measured by the cost that will be incurred by MUNI to provide increased service to maintain the applicable base service standard over the life of such new development.

K. The TIDF Study expressed the base service standard as a ratio in which the numerator is the number of hours that MUNI provides service to the public on its entire fleet of vehicles ("revenue service hours"), and the denominator is the number of trips generated by all non-residential land uses. An increase in trips resulting from new non-residential development will reduce the ratio of revenue service hours to overall trips generated by new development. To maintain the base service standard to accommodate the new development, MUNI must increase revenue service hours.

L. The TIDF Study developed a daily trip generation rate for each of six economic activity categories developed in the "Citywide Land Use Study," prepared for the Planning Department in 1998. The daily trip generation rate included automobile and public transit trips, but excluded non-motorized trips because such trips do not materially affect traffic congestion. The TIDF Study determined that the trip generation rates in each economic activity category do not vary geographically within the City. Therefore, the TIDF Study concluded that developer fee rates should not vary in different districts within the City. The trip generation rates contained in the TIDF Study represent the most reasonable rates available for the economic activity categories in the Study.

M. Using data obtained from MUNI and the fiscal year 2000 National Transit Database, the TIDF Study calculated the base service standard fee rates for each of the six economic activity categories in the following way:

(1) To calculate MUNI's total annual costs, the TIDF Study combined MUNI's fiscal year 2000 operating costs with an average annual capital budget, estimated by averaging the prior five years of MUNI's capital expenditures.

FY 2000 Operating Costs	$384,113,000
Average Annual Capital Costs	$310,000,000
Total Annual Costs	$694,113,000

(2) The Study calculated MUNI's net annual costs for fiscal year 2000 by subtracting fare box revenue and federal and state grant funds from MUNI's total costs.

Total Annual Costs	$ 694,113,000
FY 2000 Fare Box Revenue	($101,310,000)
FY 2000 Federal/State Grant Funds	($182,900,000)
Net Annual Costs	$ 409,903,000

(3) The Study then determined MUNI's net annual cost per revenue service hour by dividing MUNI's net annual costs by MUNI's average daily revenue service hours, as reported to the National Transit Database.

Net Annual Costs	Average Daily Revenue Service Hours	Net Annual Cost Per Revenue Service Hour
$ 409,903,000	÷ 8,436	$48,600

(4) The TIDF Study estimated the number of daily auto and transit trips within the City (9,035,282) by using trip generation rates and 2000 employment data supplied by the Planning Department. By dividing MUNI's average daily revenue service hours (8,436) by the estimated daily auto and transit trips within the City (9,035,282), the TIDF Study determined that MUNI provided approximately 0.9336 service hours for every 1,000 transit and auto trips. The TIDF Study multiplied the net annual cost per revenue service hour by 0.9336 to determine a net annual cost per trip.

Net Annual Cost Per Revenue Service Hour	Revenue Service Hours Per 1,000 Trips	Net Annual Cost Per Trip
$48,600	x 0.9336	$45.37

(5) The Study multiplied the net annual cost per trip by an adjusted daily trip rate per economic activity category to calculate a net annual cost per gross square foot (gsf) of new development for each economic activity category. The TIDF Study adjusted the daily trip rate to eliminate bicycle and pedestrian trips.

Economic Activity Category	Adjusted Daily Trip Rate Per 1,000 gsf	Net Annual Cost Per Trip	Net Annual Cost per gsf of Development
Cultural/Institution/Education	42.3	$45.37	$1.92
Management, Information and Professional Services	15.1	$45.37	$0.68
Medical and Health Services	23.9	$45.37	$1.08
Production/Distribution/Repair	9.6	$45.37	$0.44
Retail/Entertainment	166.8	$45.37	$7.57
Visitor Services	13.3	$45.37	$0.61

(6) Finally, the Study multiplied the net annual cost per gross square foot of development for each economic activity category by a net present value factor of 20.69 (based on a U.S. transportation industry index inflation rate of 2.05%, earning on an invested funds rate of 6.14%, and a building life span of 45 years) to establish the base service standard rates for each economic activity category that would be necessary to pay for increased transit services for the 45-year useful life of a new development.

Economic Activity Category	Net Present Value Factor	Net Annual Cost per gsf of Development	Base Service Standard Rates
Cultural/Institution/Education	20.69	$1.92	$39.67
Management, Information and Professional Services	20.69	$0.68	$14.17
Medical and Health Services	20.69	$1.08	$22.40
Production/Distribution/Repair	20.69	$0.44	$9.04
Retail/Entertainment	20.69	$7.57	$156.61
Visitor Services	20.69	$0.61	$12.53

N. In 2004, MUNI updated the base service standard rates established in the TIDF Study with fiscal year 2003 data (the "updated base service standard rates"). To calculate the updated base service standard rates, MUNI modified certain variables in the TIDF Study's formula to reflect current information, as follows.

(1) Rather than using an estimated average annual capital budget (the methodology employed in the TIDF Study), MUNI used its actual capital costs for fiscal years 1999-2003, as reported to the fiscal year 2003 National Transit Database, in determining the average annual capital costs.

Operating Costs	$449,283,888
Average Capital Costs	$192,468,200
Total Costs	$641,752,088

(2) California Government Code Section 65913.8 prohibits including costs for facility maintenance and operations in a fee imposed on a developer for a public capital facility improvement. It is not clear whether this limitation applies to the TIDF. To comply with Government Code Section 65913.8, if applicable, and to achieve a more conservative estimate of the recoverable costs, MUNI deducted its costs for non-vehicle (facility) maintenance and general administration. MUNI could not separate general administration attributable to facility operations, so MUNI deducted 100% of the general administration costs for the entire department. Accordingly, the updated base service standard rates are even more conservative than may be required under Section 65913.8.

(3) MUNI applied its updated assumptions to the TIDF Study's methodology by deducting non-vehicle maintenance and general administration (in addition to farebox revenues and grant funds) from its total costs to calculate its annual net costs:

Total Annual Costs FY 2003	$ 641,752,088
Farebox Revenue FY 2003	($97,779,333)
Federal/State Grant Funds FY 2003	($89,445,000)
Non-Vehicle Maintenance FY 2003	($34,173,560)
General Administration FY 2003	($92,197,116)
Net Annual Costs FY 2003	$ 328,157,079

(4) To determine the net annual cost per revenue service hour, MUNI used the average daily revenue service hours for Fiscal Year 2003 (10,062), as reported to the National Transit Database:

Net Annual Costs	Average Daily Revenue Service Hours	Net Annual Cost Per Revenue Service Hour
$ 328,157,079	÷ 10,062	$32,614

(5) MUNI then calculated the net annual cost per trip by multiplying the net annual cost per revenue service hour by the number of revenue service hours per 1,000 trips:

Net Annual Cost Per Revenue Service Hour	Revenue Service Hours Per 1,000 Trips	Net Annual Cost Per Trip
$32,614	x 1.1136	$36.32

(6) MUNI multiplied the net annual cost per trip by the adjusted daily trip rate for each economic activity category to arrive at a net annual cost per gross square foot of new development for each category:

Economic Activity Category	Adjusted Daily Trip Rate Per 1,000 gsf	Net Updated Annual Cost Per Trip	Net Updated Annual Cost per gsf of Development
Cultural/Institution/Education	42.3	$36.32	$1.54
Management, Information and Professional Services	15.1	$36.32	$0.55
Medical and Health Services	23.9	$36.32	$0.87
Production/Distribution/Repair	9.6	$36.32	$0.35
Retail/Entertainment	166.8	$36.32	$6.06
Visitor Services	13.3	$36.32	$0.48

(7) MUNI also updated the net present value factor the TIDF Study used to calculate the updated base service standard rates by calculating the lump sum amount needed to fund $1.00 (in today's dollars) in annual costs over 45 years, increasing at a current inflation rate of 3.50% (the five-year Bay Area Consumer Price Index as calculated by the Association for Bay Area Governments), with the remaining fund balance invested at a current interest rate of 4.93% (the five-year average interest rate earned by the City's Treasurer's Department on pooled funds). Both the TIDF Study and MUNI used the interest rate earned by the City's Treasurer for the respective years. But MUNI elected to use the Bay Area Consumer Price Index rather than the U.S. Transportation Index on which the TIDF Study relied because the Bay Area index more accurately reflects the local inflation rate. The use of the different net present value factor yields the following updated base service standard rates:

Economic Activity Category	Net Annual Cost per gsf of Development	Net Present Value Factor	Updated Base Service Standard Rates
Cultural/Institution/ Education	$1.54	33.36	$51.25
Management, Information and Professional Services	$0.55	33.36	$18.30
Medical and Health Services	$0.87	33.36	$28.96
Production/Distribution/Repair	$0.35	33.36	$11.63
Retail/Entertainment	$6.06	33.36	$202.10
Visitor Services	$0.48	33.36	$16.11

O. In setting the TIDF rates, the City considered the updated base service standard rates and input from a variety of stakeholders, including business groups, developers, and civic organizations. The City set the TIDF rates well below the updated base service standard rates to reduce the costs of the TIDF to sponsors of new developments, who are subject to other development fees imposed by the City, and to guarantee that the TIDF does not exceed the reasonable cost to fund the additional transit improvements necessitated by new development. The TIDF rates are as follows:

Economic Activity Category	Updated Base Service Standard Rates	TIDF Schedule (from Sec. 38.4)
Cultural/Institution/Education	$51.25	$10.00
Management, Information and Professional Services	$18.30	$10.00
Medical and Health Services	$28.96	$10.00
Production/Distribution/Repair	$11.63	$8.00
Retail/Entertainment	$202.10	$10.00
Visitor Services	$16.11	$8.00

P. Based on projected new development over the next 20 years, the TIDF will provide revenue to MUNI that is significantly below the costs that MUNI will incur to mitigate the transit impacts resulting from the new development.

Q. The TIDF is the most practical and equitable method of meeting a portion of the demand for additional Municipal Railway service and capital improvements for the City caused by new non-residential development.

R. Based on the above findings, the City determines that the TIDF satisfies the requirements of the Mitigation Fee Act, California Government Code Section 66001, as follows:

(1) The purpose of the fee is to meet a portion of the demand for additional Municipal Railway service and capital improvements for the City caused by new non-residential development.

(2) Funds from collection of the TIDF will be used to increase revenue service hours reasonably necessary to mitigate the impacts of new non-residential development on public transit and maintain the applicable base service standard.

(3) There is a reasonable relationship between the proposed uses of the TIDF and the impact on transit of the new developments on which the TIDF will be imposed.

(4) There is a reasonable relationship between the types of new development on which the TIDF will be imposed and the need to fund public transit for the uses specified in Section 38.8 of this ordinance.

(5) There is a reasonable relationship between the amount of the TIDF to be imposed on new developments and the impact on public transit from the new developments.

SEC. 38.3. IMPOSITION OF TRANSIT IMPACT DEVELOPMENT FEE.

A. Subject to the exceptions set forth in subsections D and E below, each sponsor of a new development in the City shall pay to the City and deliver to the Treasurer upon issuance of any temporary certificate of occupancy, and as a condition precedent to issuance for such new development of any certificate of final completion and occupancy, whichever occurs first, a TIDF. The TIDF shall be calculated on the basis of the number of gross square feet of new development, multiplied by the square foot rate then in effect for each of the applicable economic activity categories within the new development, as provided in Section 38.4 of this ordinance. An accessory use shall be charged at the same rate as the underlying use to which it is accessory. Whenever any new development or series of new developments results in more than 3,000 gross square feet of covered use within a structure, the TIDF shall be imposed on every square foot of such covered use (including any portion that was part of prior new development below the 3,000 square foot threshold).

B. No City official or agency, including the Department of Building Inspection ("DBI") and the Port of San Francisco, may issue a certificate of final completion and occupancy for any new development subject to the TIDF until it has received notification from the Treasurer that the TIDF in accordance with Section 38.4 of this Chapter has been paid.

C. Except as provided in Sections 38.3(D) and (E) below, the TIDF shall be payable with respect to any new development in the City for which a building or site permit is issued on or after the effective date of this ordinance.

D. The TIDF shall not be payable on new development, or any portion thereof, for which a transit impact development fee has been paid, in full or in part, under the prior Transit Impact Development Fee Ordinance adopted in 1981 (Ordinance No. 224-81; former Chapter 38 of this Administrative Code), except where (1) gross square feet of use is being added to the building; or (2) the TIDF rate for the new development is in an economic activity category with a higher fee rate than the rate set for MIPS, as set forth in Section 38.4.

E. No TIDF shall be payable on the following types of new development.

(1) New development on property owned (including beneficially owned) by the City, except for that portion of the new development that may be developed by a private sponsor and not intended to be occupied by the City or other agency or entity exempted under this ordinance, in which case the TIDF shall apply only to such non-exempted portion. New

development on property owned by a private person or entity and leased to the City shall be subject to the fee, unless the City is the beneficial owner of such new development or unless such new development is otherwise exempted under this Section.

(2) Any new development in Mission Bay North or South to the extent application of this ordinance would be inconsistent with the Mission Bay North Redevelopment Plan and Interagency Cooperation Agreement or the Mission Bay South Redevelopment Plan and Interagency Cooperation Agreement, as applicable.

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

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

(5) New development for which an application for environmental evaluation <u>or an application for a categorical exemption</u> has been filed prior to April 1, 2004.

(6) The following types of new developments:

(a) Public facilities/ utilities, as defined in Section 209.6 of the Planning Code;

(b) Open recreation/horticulture, as defined in Section 209.5 of the Planning Code, including private noncommercial recreation open use, as referred to in Section 221(g) of the Planning Code;

(c) Vehicle storage and access, as defined in Section 209.7 of the Planning Code;

(d) Automotive services, as defined in Section 223(l) - (v) of the Planning Code;

(e) Wholesaling, storage, distribution, and open-air handling of materials and equipment, as defined in Section 225 of the Planning Code;

(f) Other Uses, as defined in Section 227 of the Planning Code;

In reviewing whether a development is subject to the fee, the Director shall consider the project in its entirety. A sponsor may not seek multiple building permits to evade paying the TIDF.

F. The sponsor shall pay, or cause to be paid, the TIDF to the Treasurer on the earliest of the following dates:

(1) The date when 50 percent of the net rentable area of the project has been occupied;

(2) The date of issuance of the first temporary permit of occupancy in the new development;

(3) Five days prior to the date of issuance of a final certificate of occupancy.

G. Upon payment of the fee in full to the Treasurer, and upon request of the sponsor, the Treasurer shall issue a certificate that the fee has been paid. The sponsor shall present such certification to DBI before the issuance of the final certificate of occupancy for the new development. DBI shall provide notice in writing to the Treasurer, the Planning Department, and MUNI at least five business days before issuing the final certificate of occupancy for any new development project. DBI may not issue a final certificate of occupancy for any new development until DBI has received notice from the Treasurer that the TIDF has been paid.

SEC. 38.4. TRANSIT IMPACT DEVELOPMENT FEE SCHEDULE.

A. TIDF Schedule. The TIDF Schedule shall be as follows:

Economic Activity Category	TIDF Per Gross Square Foot of Development
Cultural/Institution/Education	$10.00
Management, Information and Professional Services	$10.00
Medical and Health Services	$10.00
Production/Distribution/Repair	$8.00
Retail/Entertainment	$10.00
Visitor Services	$8.00

B. Biennial Adjustment. Biennially, beginning July 1, 2005, the TIDF Schedule shall be adjusted, without further action by the Board of Supervisors, to reflect the average annual change in the Bay Area Consumer Price Index for the prior two years, as reported by the Association of Bay Area Governments, and as determined by the Director.

SEC. 38.5. SETTING OF TIDF. Before obtaining the first building or site permit for any new development in the City after the effective date of this ordinance, each sponsor shall file with the Director, on such form as the Director may develop, a report indicating the number of gross square feet of use of the new development and any other information the Director may require to determine the sponsor's obligation to pay the TIDF. Each sponsor of a new development who had applied for a building or site permit, but who had not obtained an approval of the building permit or site permit before the effective date of this ordinance, shall file the same report prior to obtaining a final certificate of occupancy. Except where an exemption otherwise applies under this ordinance, the Director shall determine the number of gross square feet of use in each applicable economic activity category, disregarding the number of pre-existing gross square feet of use being retained in each such category, apply the fee schedule, and determine the fee. The Director shall mail a copy of his or her written determination to the sponsor. The sponsor may appeal the determination of the number of gross square feet of use subject to the fee, the economic activity category, or the credits described in Section 38.6, to the MTA Board. If the sponsor notifies the Director of its acceptance of the determination, or does not submit an appeal to the MTA Board within 15 days following the date of mailing of notice of the Director's determination, the Director's determination shall be final, and a notice of such determination shall be provided to DBI and the Treasurer. DBI may not issue a site or building permit for any new development until it has received notice from the MTA of the final determination of the amount of the Transit Impact Development Fee to be paid. The MTA shall not change the amount of the TIDF based on changes to the amount of gross square feet of new development during construction of the new development unless the sponsor applies for a new building permit to reflect such changes.

SEC. 38.6. CREDITS. In determining the number of gross square feet of use to which the TIDF applies, the Director shall provide a credit for prior uses eliminated on the site, provided that a TIDF has not been paid for any prior use of the property. The credit shall be calculated according to the following formula:

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

(1) The adjustment factor shall be a fraction, the numerator of which shall be the fee rate which the Director shall determine, in consultation with the Department of City Planning, if necessary, applies to the economic activity category in the most recent calculation of the TIDF Schedule approved by the MTA Board for the prior use being eliminated by the project.

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

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

(c) As of the effective date of this ordinance, no sponsor shall be entitled to a refund of the TIDF on a building for which the fee was paid under the former Chapter 38.

SEC. 38.7. REVIEW OF FEE SCHEDULE.

A. Five-Year Review.

(1) Commencing five years after the effective date of this ordinance, and every five years thereafter, or more often as the MTA Board may deem necessary, the Director shall prepare a report for the MTA Board and the Board of Supervisors with recommendations regarding whether the TIDF for each economic activity category should be increased, decreased, or remain the same. In making such recommendations, and to the extent that new information is available, the Director shall update the following information and estimates that were used in the TIDF Study to calculate the base service standard fee rates, and any other information that the Director deems appropriate.

(a) The base service standard;

(b) Capital and operating costs;

(c) Federal and state grant funds received by MUNI;

(d) Passenger fare revenue;

(e) Daily revenue service hours;

(f) Cost per revenue service hour;

(g) Trip generation rates by economic activity category;

(h) Cost per trip;

(i) Cost per gross square foot of development by economic activity category;

(j) Net present value factor;

(k) Useful life period(s) for new development by economic activity category;

(l) Estimated annual rate of return on the proceeds of the fee;

(m) The placement of particular land uses in economic activity categories.

Where applicable, the Director shall use the most recent MUNI information as submitted to the National Transit Database. The denominator of the revised base service standard shall be calculated using the most recent estimates of daily automobile and transit trips developed by the City's Planning Department or other City or state agency.

(2) In the report, the Director shall (a) identify the base service standard fee rates per gross square foot in each economic activity category; and (b) propose a fee for each economic activity category.

(3) After receiving this report and making it available for public distribution, the Board of Supervisors shall conduct a public hearing in which it shall consider the Director's report, hear testimony from any interested members of the public, and receive such other evidence as it may deem necessary. At the conclusion of that hearing, the Board shall make findings regarding whether the revenues projected to be recovered under the proposed Fee Schedule would be reasonably related to and would not exceed the costs incurred by MUNI to maintain the applicable base service standard, in light of demands caused by new development. The Board of Supervisors shall then make any necessary or appropriate revisions to the TIDF Schedule.

(4) The Board shall consider the Director's report in light of the most recent five-year review of the Housing Fee (Planning Code § 313.15), Child Care Fee (Planning Code § 314.7) and Inclusionary Housing Fee (Planning Code § 315.8(e)). MUNI and the

Planning Department shall make every effort to coordinate application of the TIDF with the City's other developer fees to avoid unnecessarily encumbering sponsors of new development.

B. Principles in Calculating Fee. The following principles have been and shall in the future be observed in calculating the TIDF:

(1) Actual cost information provided to the National Transit Database shall be used in calculating the fee rates. Where estimates must be made, those estimates should be based on such information as the Director or his or her delegate considers reasonable for the purpose.

(2) The rates shall be set at an actuarially sound level to ensure that the proceeds, including such earnings as may be derived from investment of the proceeds and amortization thereof, do not exceed the capital and operating costs incurred in order to maintain the applicable base service standard in light of the demands created by new development subject to the fee over the estimated useful life of such new development. For purposes of this Ordinance, the estimated useful life of a new development is 45 years.

SEC. 38.8. USE OF PROCEEDS FROM TRANSIT IMPACT DEVELOPMENT FEE.

Money received from collection of the TIDF, including earnings from investments of the TIDF, shall be held in trust by the Treasurer under Section 66006 of the Mitigation Fee Act (Cal. Gov. Code §§ 60000 *et seq.*) and shall be distributed according to the fiscal and budgetary provisions of the San Francisco Charter and the Mitigation Fee Act, subject to the following conditions and limitations. TIDF funds may be used to increase revenue service hours reasonably necessary to mitigate the impacts of new non-residential development on public transit and maintain the applicable base service standard, including, but not limited to: capital costs associated with establishing new transit routes, expanding transit routes, and increasing service on existing transit routes, including, but not limited to, procurement of related items such as rolling stock, and design and construction of bus shelters, stations, tracks, and overhead wires; operation and maintenance of rolling stock associated with new or expanded transit routes or increases in service on existing routes; capital or operating costs required to add revenue service hours to existing routes; and related overhead costs. Proceeds from the TIDF may also be used for all costs required to administer, enforce, or defend this ordinance.

SEC. 38.9. RULES AND REGULATIONS.

The MTA is empowered to adopt such rules, regulations, and administrative procedures as it deems necessary to implement this Chapter. In the event of a conflict between any MTA rule, regulation or procedure and this ordinance, this ordinance shall prevail.

SEC. 38.10. NONPAYMENT, RECORDATION OF NOTICE OF FEE AND NOTICE OF DELINQUENCY, ADDITIONAL REQUEST; NOTICE OF ASSESSMENT OF INTEREST, AND INSTITUTION OF LIEN PROCEEDINGS.

A. Upon the Director's determination that a development is subject to this ordinance, he or she may cause the County Recorder to record a notice that such development is subject to the TIDF. The County Recorder shall serve or mail a copy of such notice to the persons liable for payment of the fee and the owners of the real property described in the notice. The notice shall include (1) a description of the real property subject to the fee; (2) a statement that the development is subject to the imposition of the fee; and (3) a statement that the amount of the fee to which the building is subject is determined under Sections 38.4, 38.5 and related provisions of this ordinance.

B. When the Director determines that the fee is due, the Director shall notify the Treasurer, who shall send a request for payment to the sponsor.

C. Payment of the TIDF imposed by this ordinance is delinquent if (1) in the case of a fee not payable in installments, the fee is not paid within 30 days of request for payment; (2) in the case of a fee payable in installments (for a fee determined prior to the effective date of this Ordinance), the fee installment is not paid within 30 days of the date fixed for payment.

D. Where the TIDF is not paid within 30 days of request for payment, and where the TIDF is payable in installments (for a fee determined prior to the effective date of this Ordinance) and any installment is not paid within 30 days of the date fixed for payment:

(1) The Treasurer or his or her designee may cause the County Recorder to record a notice of delinquent TIDF which shall include: (a) the amount of the delinquent fee; (b) the amount of the entire fee as reflected on the final determination and a statement of whether the fee is payable in installments; (c) the fee interest and penalty then due; (d) the interest and penalties that shall accrue on the delinquent fee if not promptly paid; (e) a description of the real property subject to the fee; (f) notification that if the fee is not promptly paid proceedings will be instituted before the Board of Supervisors to impose a lien for the unpaid fee together with any penalties and interest against the real property described in the delinquency notice; (g) notification of the fee payer's right to appeal the delinquency determination to the MTA Board within 15 days of the notice to the fee payer.

(2) Where the Treasurer determines to record a notice of delinquency, he or she shall also serve or mail the notice of delinquent TIDF to the persons liable for the fee and to the owners of the real property described on the notice.

(3) Where a notice of TIDF delinquency has been recorded and the delinquent fee is paid or the Treasurer's determination of delinquency is reversed by appeal to the MTA Board or the delinquency is otherwise cured, the Treasurer shall promptly cause the County Recorder to record a notice that the TIDF delinquency has been cured. Said notice shall include: (a) description of the real property affected; (b) the book and page number of

the county record wherein the notice of delinquency was recorded; (c) the date the notice of delinquency was recorded; (d) notification that the delinquency reflected on the notice of delinquency was cured and the date of cure; (e) the amount of the entire fee as reflected on the final determination; (f) if applicable, the amount of the fee paid to effect the cure; and (g) if applicable, a statement that the fee was payable in installments and specification of the delinquency installments cured; (h) if applicable, the amount of the fee paid to effect the cure.

(4) The Treasurer shall serve or mail the notice that the TIDF delinquency has been cured, referred to in Section 38.10.D(3) of this ordinance, to the persons liable for the fee and to the owners of the real property described in such notice.

E. Where the TIDF, not payable in installments, is not paid within 30 days of request for payment, and where the TIDF is payable in installments (for a fee determined prior to the effective date of this Ordinance) and the installment is not paid within 30 days of the date fixed for payment, the Treasurer or his or her designee shall mail an additional request for payment and notice to the owner stating the following:

(1) If the amount due is not paid within 30 days of the date of mailing the additional request and notice, interest at the rate of one and one-half percent per month or portion thereof shall be assessed upon the fee or installment due.

(2) With respect to both non-installment and installment fees, if the account is not current within 60 days of the date of mailing the additional request and notice, the Treasurer shall institute proceedings to record a lien in accordance with Section 38.11 for the entire balance and any accrued interest against the property upon which the fee is owed.

F. Thirty days after mailing the additional request for payment, the Treasurer may assess interest as specified in paragraph 38.10.E(1) above. Sixty days after mailing the additional request for payment and notice, the Treasurer may institute lien proceedings as specified in Section 38.11.

G. The Treasurer shall submit a report to the Director on a quarterly basis of all fees collected for the previous quarter, which report shall include the property address, name of sponsor or owner of the property, and the amount of the fee, including interest, if any, collected.

SEC. 38.11. LIEN PROCEEDINGS; NOTICE. If payment of the fee not payable in installments is not received within 30 days following mailing of the additional request and notice, or if with respect to installment payments, the account is not brought current within 60 days of the mailing of the additional request and notice, the Treasurer shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the TIDF, including interest on the unpaid fee or installments, a lien against all parcels used for the development project. The Treasurer shall send all notices required by that Article to the owner of the property as well as the sponsor. The Treasurer shall also prepare a preliminary report notifying the sponsor of a hearing to confirm such report by the Board of Supervisors at least 10 days before the date of the hearing. The report to the sponsor shall contain the sponsor's name, a description of the sponsor's development project, a description of the parcels of real property to be encumbered as set forth in the Assessor's Map Books for the current year, a description of the alleged violation of this ordinance, and shall fix a time, date, and place for hearing. The Treasurer shall cause this report to be mailed to the sponsor and each owner of record of the parcels of real property subject to lien. Except for the release of the lien recording fee authorized by Administrative Code Section 10.237, all sums collected by the Tax Collector under this ordinance shall be held in trust by the Treasurer and distributed as provided in Section 38.6 of this Chapter.

SEC. 38.12. MANNER OF GIVING NOTICES.

Any notice required to be given under this ordinance to a sponsor or owner shall be sufficiently given or served upon the sponsor or owner for all purposes under this ordinance if personally served upon the sponsor or owner, or if deposited, postage prepaid, in a post office letter box addressed in the name of the sponsor or owner at the official address of the sponsor or owner maintained by the Tax Collector of the City and County for the mailing of tax bills; or, if no such address is available, to the sponsor at the address of the development project, and to the applicant for the site or building permit at the address on the permit application.

SEC. 38.13. CHARITABLE EXEMPTIONS.

A. When the property or a portion thereof will be exempt from real property taxation or possessory interest taxation under California Constitution, Article XIII, Section 4, as implemented by California Revenue and Taxation Code Section 214, then the sponsor shall not be required to pay the TIDF attributed to the new development in the exempt property or portion thereof, so long as the property or portion thereof continues to enjoy the aforementioned exemption from real property taxation.

B. The TIDF shall be calculated for exempt structures in the same manner and at the same time as for all other structures. The sponsor may apply to the MTA for an exemption under the standards set forth in subsection A above. In the event the Agency determines that the sponsor is entitled to an exemption under this Section, it shall cause to be recorded a notice advising that the TIDF has been calculated and imposed upon the structure and that the structure or a portion thereof has been exempted from payment of the fee but that if the property or portion thereof loses its exempt status during the 10-year period commencing with the date of the imposition of the TIDF, then the building owner shall be subject to the requirement to pay the fee.

C. If within 10 years from the date of the issuance of the Certificate of Final Completion and Occupancy, the exempt property or portion thereof loses its exempt status, then the sponsor shall, within 90 days thereafter, be obligated to pay the TIDF, reduced by an amount reflecting the duration of the charitable exempt status in relation to the useful life estimate used in determining the TIDF for that structure. The amount remaining to be paid shall be determined by recalculating the fee using a useful life equal to the useful life used in the initial calculation minus the number of years during which the exempt status has been in effect. After the TIDF has been paid, the Agency shall record a release of the notice recorded under subsection B. above.

D. In the event a property owner fails to pay a fee within the 90-day period, a notice for request of payment shall be served by the Treasurer under Section 38.10.B of this Chapter. Thereafter, upon nonpayment, a lien proceeding shall be instituted under Section 38.11 of this Chapter.

SEC. 38.14. SEVERABILITY.

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

Section 2. This ordinance shall become effective 60 days after the date of final approval of the ordinance.

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

By: ______________________
Robin M. Reitzes
Deputy City Attorney

City and County of San Francisco

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

Tails

Ordinance

File Number: 040141 **Date Passed:**

Ordinance repealing San Francisco Administrative Code Chapter 38 (Transit Impact Development Fee) and replacing it with a new Chapter 38 (Sections 38.1, through 38.14), to enact a new Transit Impact Development Fee.

July 20, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval
Noes: 1 - Hall

July 27, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Alioto-Pier, Ammiano, Daly, Dufty, Gonzalez, Ma, Maxwell, McGoldrick, Peskin, Sandoval
Noes: 1 - Hall

File No. 040141

I hereby certify that the foregoing Ordinance was FINALLY PASSED on July 27, 2004 by the Board of Supervisors of the City and County of San Francisco.

Gloria L. Young
Clerk of the Board

AUG 0 5 2004

Date Approved

Mayor Gavin Newsom

File No. 040141