

File Nos. 101523

Committee Item Nos. 3

Board Item No. 19

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date March 7, 2011

Board of Supervisors Meeting

Date March 15, 2011

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Environmental Review Determination, dtd 12/22/10</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Planning Commission Resolution No. 18240</u> |
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Completed by: Gail Johnson Date 3/4/11
Completed by: Alisa Somera Date March 9, 2011

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

1 [Planning Code, Administrative Code - Development Impact and In-Lieu Fees]

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

21
22 NOTE: Additions are *single-underline italics Times New Roman*;
23 deletions are *strike-through italics Times New Roman*.
24 Board amendment additions are double-underlined;
25 Board amendment deletions are ~~strikethrough-normal~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) **Hearing to Review Effectiveness of Fee Deferral Program.** Under 107A.13.3
20 of the San Francisco Building Code, the option to defer the payment of development fees
21 expires on July 1, 2013 unless the Board of Supervisors extends the Fee Deferral Program.
22 Prior to the July 1, 2013 expiration date, the Planning Commission shall hold a public hearing
23 to review the effectiveness of the Fee Deferral Program, the economy at large, and whether
24 the stimulative effects of the Fee Deferral Program are still necessary. Following the public
25

1 hearing, the Commission shall forward a recommendation to the Board of Supervisors as to
2 whether the Fee Deferral Program should be continued, modified, or terminated.

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

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

21 (b) **Annual Development Fee Infrastructure Construction Cost Inflation**
22 **Adjustments.** *In conjunction with* Prior to issuance of the Annual Citywide Development Fee
23 and Development Impact Requirements Report referenced in subsection (a) above, the
24 Controller shall review the amount of each development fee established in the San Francisco
25 Planning Code this Article and, with the exception of the Jobs-Housing Linkage Fee in Section

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

22 23 **SEC. 411.3. APPLICATION OF TIDF.**

24 (a) **Application.** Except as provided in Subsections (1) and (2) below, the TIDF
25 shall be payable with respect to any new development in the City for which a building or site

1 permit is issued on or after September 4, 2004. In reviewing whether a development project is
2 subject to the TIDF, the project shall be considered in its entirety. A sponsor shall not seek
3 multiple applications for building permits to evade paying the TIDF for a single development
4 project.

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

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

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

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

23 (C) New development located on property owned by the United States or any of its
24 agencies to be used exclusively for governmental purposes.
25

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

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

13 (F) The following types of new developments:

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

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

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

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

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

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

23 (b) **Timing of Payment.** Except for those Integrated PDR projects subject to
24 Section 328 of this Code, the TIDF shall be paid prior to issuance of the first construction
25 document, with an option for the project sponsor to defer payment until prior to issuance of the

1 first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with
2 Section 107A.13 of the San Francisco Building Code. Under no circumstances may any City
3 official or agency, including the Port of San Francisco, issue a certificate of final completion
4 and occupancy for any new development subject to the TIDF until the TIDF has been paid;

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

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

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

21 (A) The adjustment factor shall be a fraction, the numerator of which shall be the fee
22 rate which the Department shall determine, in consultation with the MTA, if necessary, applies
23 to the economic activity category in the most recent calculation of the TIDF Schedule
24 approved by the MTA Board for the prior use being eliminated by the project.
25

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

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

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

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

10 (e) **TIDF Schedule.**

11 ~~(f)~~ The TIDF Schedule shall be as follows:

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

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

1 **SEC. 411.4. IMPOSITION OF TIDF.**

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

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

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

22
23 **SEC. 412.4. IMPOSITION OF DOWNTOWN PARK FEE REQUIREMENT.**

24 (a) **Determination of Requirements.** The Department shall determine the
25 applicability of Section 412.1 et seq. to any development project requiring a first construction

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

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

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

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

22 **SEC. 413.4. IMPOSITION OF HOUSING REQUIREMENT.**

23 (a) **Determination of Requirements.** The Department shall determine the
24 applicability of Section 413.1 et seq. to any development project requiring a first construction
25 document building or site permit, and if Section 413.1 et seq. is applicable, the number of gross

1 square feet of each type of space subject to its requirements, and shall impose these
2 requirements as a condition of approval for issuance of the *first construction document building*
3 for the development project to mitigate the impact on the availability of housing which will be
4 caused by the employment facilitated by the development project. The project sponsor shall
5 supply any information necessary to assist the Department in this determination.

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

11 (c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or
12 site permit for a development project subject to the requirements of Section 413.1 et seq., the
13 sponsor shall elect one of the three options listed below to fulfill any requirements imposed as
14 a condition of approval and notify the Department of their choice of the following:

15 (1) Contribute of a sum or land of value at least equivalent to the in-lieu fee,
16 according to the formulas set forth in Section 413.6, to one or more housing developers who
17 will use the funds or land to construct housing units pursuant to Section 413.5; or

18 (2) Pay an in-lieu fee to the Development Fee Collection Unit at DBI according to
19 the formula set forth in Section 413.6; or

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

21 (d) **Department's Notice to Development Fee Collection Unit of Sponsor's**
22 **Choice.** After the project sponsor has notified the Department of the choice to fulfill the
23 requirements of Section 413.1 et seq., the Department shall immediately notify the
24 Development Fee Collection Unit at DBI of the project sponsor's choice.
25

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

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

14
15 **SEC. 413.6. COMPLIANCE BY PAYMENT OF IN-LIEU FEE.**

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

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

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

24 **TABLE 413.6**

25 **FEE SCHEDULE FOR NET ADDITIONS OF GROSS SQUARE FEET**

1	Use	Fee per Gross Square Foot
2	Entertainment	\$18.62
3	Hotel	\$14.95
4	Integrated PDR	\$15.69
5	Institutional	\$0.00
6	Office	\$19.96
7	PDR	\$0.00
8	Research & Development	\$13.30
9	Residential	\$0.00
10	Retail	\$18.62
11	Small Enterprise Workspace	\$15.69

14 **TABLE 413.6**

15 **FEE SCHEDULE FOR REPLACEMENT OF USE OR CHANGE OF USE**

16	Previous Use	New Use	Fee per 17 18 19 20 21 22 23 24 25 Gross Square Foot
16	Entertainment, Hotel, 17 18 19 20 21 22 23 24 25 Integrated PDR, Office, Research & Development, Retail, or Small Enterprise Workspace	Entertainment, Hotel, Integrated PDR, Office, Retail, or Small Enterprise Workspace	\$0.00
16	PDR which received its First Certificate of Occupancy on or	Entertainment, Hotel, Integrated PDR, Office, Research &	Use Fee from Table

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

19 (b) Commencing on December 1, 2011, No no later than July December 1 of each
20 year, MOH shall adjust the in-lieu fee payment option and provide a report on its adjustment
21 to the Board of Supervisors. MOH shall provide notice of any fee adjustment on its website at
22 least 30 days prior to the adjustment taking effect. MOH is authorized to develop an
23 appropriate methodology for indexing the fee, based on adjustments in the costs of
24 constructing housing and in the price of housing in San Francisco consistent with the indexing
25 for the Residential Inclusionary Affordable Housing Program in lieu fee set out in Section

1 415.6. The method of indexing shall be published in the Procedures Manual for the
2 Residential Inclusionary Affordable Housing Program. In making a determination as to the
3 amount of the fee to be paid, the Department shall credit to the sponsor any excess Interim
4 Guideline credits or excess credits which the sponsor elects to apply against its housing
5 requirement.

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

12
13 **SEC. 413.8. COMPLIANCE BY COMBINATION OF PAYMENT TO HOUSING**
14 **DEVELOPER AND PAYMENT OF IN-LIEU FEE.**

15 With the written approval of the Director of MOH, the sponsor of a development project
16 subject to Section 413.1 et seq. may elect to satisfy its housing requirement by a combination
17 of paying money or contributing land to one or more housing developers under Section 413.5
18 and paying a partial amount of the in-lieu fee to the Development Fee Collection Unit at DBI
19 under Section 413.6. In the case of such election, the sponsor must pay a sum such that each
20 gross square foot of net addition of each type of space subject to Section 413.1 et seq. is
21 accounted for in either the payment of a sum or contribution of land to one or more housing
22 developers or the payment of a fee to the Development Fee Collection Unit. The housing units
23 constructed by a housing developer must conform to all requirements of Section 413.1 et
24 seq., including, but not limited to, the proportion that must be affordable to qualifying
25 households as set forth in Section 413.5. All of the requirements of Sections 413.5 and 413.6

1 shall apply, including the requirements with respect to the timing of issuance of site and
2 building permits, first construction documents, and certificates of occupancy for the development
3 project and payment of the in-lieu fee.
4

5 **SEC. 414.4. IMPOSITION OF CHILD CARE REQUIREMENT.**

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

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

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

23 (1) Provide a child-care facility on the premises of the development project for the
24 life of the project pursuant to Section 414.5; or
25

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

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

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

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

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

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

20 (e) **Development Fee Collection Unit Notice to Department Prior to Issuance of**
21 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
22 provide notice in writing or electronically to the Department prior to issuing the first certificate
23 of occupancy for any development project subject to Section 414.1 et seq. that has elected to
24 fulfill all or part of its requirement with an option other than payment of an in-lieu fee. If the
25 Department notifies the Unit at such time that the sponsor has not satisfied the requirements,

1 the Director of DBI shall deny any and all certificates of occupancy until the subject project is
2 brought into compliance with the requirements of Section 414.1 et seq.

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

8
9 **SEC. 414.10. COMPLIANCE BY ENTERING INTO AN ARRANGEMENT WITH A NON-
10 PROFIT ORGANIZATION.**

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

16 (a) A space for a child-care facility has been provided by the nonprofit organization,
17 either for its own use if the organization will provide child-care services, or to a nonprofit child-
18 care provider without charge for rent, utilities, property taxes, building services, repairs, or any
19 other charges of any nature, as evidenced by a lease or sublease and an operating
20 agreement between the nonprofit organization and the provider with minimum terms of three
21 years;

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

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

25
$$\text{Net add. gross sq. ft. office or hotel space} \times .01 = \text{sq. ft. of child-care facility}$$

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

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

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

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

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

23
24 **SEC. 414.14. CHILD CARE CAPITAL FUND.**
25

1 There is hereby established a separate fund set aside for a special purpose called the
2 Child Care Capital Fund ("Fund"). All monies contributed pursuant to the provisions of Section
3 414.1 et seq., and all other monies from the City's General Fund or from contributions from
4 third parties designated for the fund shall be deposited in the Fund. All monies in the fund
5 shall be used solely to increase and/or improve the supply of child care facilities affordable to
6 households of low and moderate income; except that monies from the fund shall be used by
7 the Director to fund in a timely manner any nexus study required to demonstrate the
8 relationship between commercial development projects and child care demand as described
9 in Section 414.1 414.4. The Fund shall be administered by the Director, who shall adopt rules
10 and regulations governing the disposition of the Fund which are consistent with Section 414.1
11 et seq. Such rules and regulations shall be subject to approval by resolution of the Board of
12 Supervisors.

13
14 **SEC. 414.15. DECREASE IN CHILD CARE FORMULAE AFTER STUDY.**

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

1 **SEC. 415.5. COMPLIANCE THROUGH PROVISION OF ON-SITE AFFORDABLE**
2 **HOUSING. AFFORDABLE HOUSING FEE**

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

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

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

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

17 (2) The affordability gap using data on the cost of construction of residential housing
18 from the "San Francisco Sensitivity Analysis Summary Report: Inclusionary Housing Program"
19 prepared by Keyser Marston Associates, Inc. in August 2006 for the Maximum Annual Rent or
20 Maximum Purchase Price for the equivalent unit sizes. The Department and MOH shall
21 update the technical report from time to time as they deem appropriate in order to ensure that
22 the affordability gap remains current.

23 (3) No later than ~~July~~ January 1 of each year, MOH shall adjust the fee and provide
24 a report on its adjustment to the Board of Supervisors. MOH shall provide notice of any fee
25 adjustment on its website at least 30 days prior to the adjustment taking effect. MOH is

1 authorized to develop an appropriate methodology for indexing the fee, based on adjustments
2 in the costs of constructing housing and in the price of housing in San Francisco. The method
3 of indexing shall be published in the Procedures Manual.

4 (c) **Notice to Development Fee Collection Unit of Amount Owed.** Prior to
5 issuance of the first construction document for a development project subject to Section
6 415.5, MOH shall notify the Development Fee Collection Unit at DBI electronically or in writing
7 of its calculation of the amount of the fee owed.

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

14 (e) If a housing project is located in an Area Plan with an additional or specific
15 affordable housing requirements such as those set forth in section 416 and 417 or elsewhere
16 in this code, the more specific provisions shall apply in lieu of or in addition to those provided
17 in this Program, as applicable.

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

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

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

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

1 (c) pay the expenses of MOH in connection with monitoring and administering
2 compliance with the requirements of the Program. MOH is authorized to use funds in an
3 amount not to exceed \$200,000 every 5 years to conduct follow-up studies under Section
4 415.9(e) and to update the affordable housing fee amounts as described above in Section
5 415.5(b). All other monitoring and administrative expenses shall be appropriated through the
6 annual budget process or supplemental appropriation for MOH. The fund shall be
7 administered and expended by MOH, which shall have the authority to prescribe rules and
8 regulations governing the Fund which are consistent with this Section.

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

10 (A) **Designation of funds.** MOH shall designate and separately account for 10%
11 percent of all fees that it receives under Section 415.1 et seq., excluding fees that are
12 geographically targeted such as those in Sections 415.6(a)(1) and 827(b)(C), to support
13 acquisition and rehabilitation of Small Sites ("Small Sites Funds"). MOH shall continue to
14 divert 10 percent of all fees for this purpose until the Small Sites Funds reach a total of \$15
15 million at which point, MOH will stop designating funds for this purpose. At such time as
16 designated Small Sites Funds are expended and dip below \$15 million, MOH shall start
17 designating funds again for this purpose, such that at no time the Small Sites Funds shall
18 exceed \$15 million. When the total amount of fees paid to the City under Section 415.1 et seq.
19 totals less than \$10 million over the preceding 12 month period, MOH is authorized to
20 temporarily divert funds from the Small Sites Fund for other purposes. MOH must keep track
21 of the diverted funds, however, such that when the amount of fees paid to the City under
22 Section 415.1 et seq. meets or exceeds \$10 million over the preceding 12 month period, MOH
23 shall commit all of the previously diverted funds and 10 percent of any new funds, subject to
24 the cap above, to the Small Sites Fund.
25

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

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

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

19 (E) **Intent.** In adopting this ordinance regarding Small Sites Funds, the Board of
20 Supervisors does not intend to preclude MOH from expending other eligible sources of
21 funding on Small Sites as described in this Section, or from allocating or expending more than
22 \$15 million of other eligible funds on Small Sites.

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

24 (1) **Eligibility:** A project sponsor must pay the Affordable Housing Fee unless it
25 qualifies for and chooses to meet the requirements of the Program through an Alternative

1 provided in this Subsection. The project sponsor may choose one of the following
2 Alternatives:

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

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

9 (C) Alternative #3: Combination. Project sponsors may elect any combination of
10 payment of the Affordable Housing Fee as provided in Section 415.5, construction of on-site
11 units as provided in Section 415.6 or construction of off-site units as provided in Section
12 415.7, provided that the project applicant constructs or pays the fee at the appropriate
13 percentage or fee level required for that option.

14 (2) **Qualifications:** If a project sponsor wishes to comply with the Program through
15 one of the Alternatives described in (1) rather than pay the Affordable Housing Fee, they must
16 demonstrate that they qualify for the Alternative to the satisfaction of the Department and
17 MOH. A project sponsor may qualify for an Alternative by the following methods:

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

23 (ii) **Method #2- Government Financial Contribution.** Submit to the Department a
24 contract demonstrating that the project's on- or off-site units are not subject to the Costa
25 Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section

1 1954.52(b), it has entered into an agreement with a public entity in consideration for a direct
2 financial contribution or any other form of assistance specified in California Government Code
3 Sections 65915 et seq. and it submits an Affidavit of such to the Department. All such
4 contracts entered into with the City and County of San Francisco must be reviewed and
5 approved by the Mayor's Office Housing and the City Attorney's Office. All contracts that
6 involve 100% affordable housing projects in the residential portion may be executed by the
7 Mayor or the Director of the Mayor's Office of Housing. Any contract that involves less than
8 100% affordable housing in the residential portion, may be executed by either the Mayor, the
9 Director of the Mayor's Office of Housing or, after review and comment by the Mayor's Office
10 of Housing, the Planning Director; or

11 (iii) **Method #3 – Development Agreement.** A project sponsor may apply to enter
12 into a Development Agreement with the City and County of San Francisco under California
13 Government Code Section 65864 et seq. and Chapter 56 of the San Francisco Administrative
14 Code, permitting the project to be eligible for on-site units as an alternative to payment of the
15 Affordable Housing Fee to satisfy the requirements of the Program and obligating the project
16 sponsor to provide the affordable units on-site.

17 (3) The Planning Commission or the Department may not require a project sponsor
18 to select a specific Alternative. If a project sponsor elects to meet the Program requirements
19 through one of the Alternatives described in (1), they must choose it and demonstrate that
20 they qualify prior to any project approvals from the Planning Commission or Department. The
21 Alternative will be a condition of project approval and recorded against the property in an
22 NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described
23 in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit
24 to Establish Eligibility for an Alternative to Affordable Housing Fee' based on the fact that the
25 units will be sold as ownership units. A The project sponsor who has elected to construct

1 affordable ownership units on- or off-site may only elect to pay the Affordable Housing Fee up
 2 to the issuance of the first construction document if the project sponsor submits a new
 3 Affidavit establishing that the units will not be sold as ownership units. If a project sponsor
 4 fails to choose an Alternative before project approval by the Planning Commission or Planning
 5 Department or if a project becomes ineligible for an Alternative, the provisions of Section
 6 415.5 shall apply.

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

14
 15 **SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING REQUIREMENT.**

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

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

22 **TABLE 416.3A**

23 **AFFORDABLE HOUSING FEE SCHEDULE IN THE MARKET AND OCTAVIA**
 24 **PROGRAM AREA**

	Van Ness and	NCT	
--	--------------	-----	--

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

(b) **Other Fee Provisions.** This additional affordable housing fee shall be subject to the inflation adjustment provisions of Section 409 and the waiver and reduction provisions of Section 406 421.4. This additional affordable housing fee may not be met through the in-kind provision of community improvements or Community Facilities (Mello Roos) financing options of Sections 426.3 421.3(d) and (e) and (f).

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

(d) **Timing of Payment.** The Market and Octavia Plan Area Affordable Housing Fee shall be paid before the City issues a first construction document, with an option for the

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

4
5 **SEC. 417.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENT.**

6 **Determination of Requirements.** The Department shall determine the applicability of
7 Section 417.1 et seq. to any development project requiring a *first construction document building*
8 *or site permit* and, if Section 417.1 et seq. is applicable, shall impose any such requirements
9 as a condition of approval for issuance of the *first construction document for building or site*
10 *permit the development project*. The project sponsor shall supply any information necessary to
11 assist the Department in this determination.

12 **(b) Department Notice to Development Fee Collection Unit at DBI of Fee**
13 **Requirements.** After the Department has made its final determination regarding the application
14 of the affordable housing requirements to a development project pursuant to Section 417.1 et
15 seq., it shall immediately notify the Development Fee Collection Unit at DBI of the applicable
16 affordable housing fee amount in addition to the other information required by Section 402(b)
17 of this Article.

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

23
24 **SEC. 418.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE AND SOMA**
25 **STABILIZATION FEE.**

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

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

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

22 (d) **Process for Revisions of Determination of Requirements.** In the event that the
23 Department or the Commission takes action affecting any development project subject to
24 Section 418.1 et seq. and such action is subsequently modified, superseded, vacated, or
25

1 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
2 or by court action, the procedures of Section 402(c) shall be followed.

3
4 **SEC. 419.2. DEFINITIONS.** (a) In addition to the definitions set forth in Section 401 of this
5 Article:

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

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

11 (B) A Notice of Special Restrictions (NSR), with the City as a third party beneficiary
12 and subject to written approval of the Director, shall be recorded on the title of the property
13 prior to final map approval containing the terms of the agreement described above in
14 subsection (1). Once the agreement is recorded against the property, the NSR shall
15 terminate.

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

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

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

22
23 **SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

1 Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning
2 District of the Eastern Neighborhoods, that is subject to the requirements of Sections 415 et
3 seq.

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

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

13 (A) If the project sponsor *is eligible for and* elects pursuant to Section 415.5(g)
14 415.4(e)(2), to build off-site units to satisfy the requirements of this program, the sponsor shall
15 construct 23 percent so that a sponsor must construct .23 times the total number of units
16 produced in the principal project beginning with the construction of the fifth unit. If the total
17 number of units is not a whole number, the sponsor shall round up to the nearest whole
18 number for any portion of .5 or above.

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

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

7 (A) If the project sponsor *is eligible for and* elects pursuant to Section 415.5(g)
8 415.4(e)(2), to build off-site units to satisfy the requirements of this program, the sponsor shall
9 construct 25 percent so that a sponsor must construct .25 times the total number of units
10 produced in the principal project beginning with the construction of the fifth unit. If the total
11 number of units is not a whole number, the sponsor shall round up to the nearest whole
12 number for any portion of .5 or above.

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

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

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

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

14 (c) Timing and Payment of Fee. Any fee required by Section 419.1 et seq. shall be
15 paid to the Development Fee Collection Unit at DBI prior to issuance of the first construction
16 document, with an option for the project sponsor to defer payment to prior to issuance of the
17 first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with
18 Section 107A.13.3 of the San Francisco Building Code.

19
20 **SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.**

21 The Department shall determine the applicability of Section 419.1 et seq. to any
22 development project requiring a first construction document ~~building or site permit~~ and, if Section
23 419.1 et seq. is applicable, the additional affordable housing required pursuant to Section
24 419.1 et seq. and shall impose these requirements as condition on the approval for issuance
25

1 of the first construction document building or site permit for the development project. The project
2 sponsor shall supply any information necessary to assist the Department in this determination.

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

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

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

17 (e) **The Development Fee Collection Unit Notice to Department Prior to**
18 **Issuance of the First Certificate of Occupancy**. The Development Fee Collection Unit at
19 DBI shall provide notice in writing or electronically to the Department prior to issuing the first
20 certificate of occupancy for any development project subject to Section 419.1 et seq. that has
21 elected to fulfill its requirement with an option other than payment of an in-lieu fee. If the
22 Department notifies the Unit at such time that the sponsor has not satisfied the requirements,
23 the Director of DBI shall deny any and all certificates of occupancy until the subject project is
24 brought into compliance with the requirements of Section 419.1 et seq.
25

1 (f) **Process for Revisions of Determination of Requirements.** In the event that
2 the Department or the Commission takes action affecting any development project subject to
3 Section 419.1 et seq. and such action is subsequently modified, superseded, vacated, or
4 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
5 or by court action, the procedures of Section 402(c) of this Article shall be followed.
6

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

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

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

20 (A) A minimum percent of the total units constructed shall be affordable to and
21 occupied affordable to qualifying "middle income" households upon initial sale, according the
22 schedule in Table 419A.4. If the total number of units is not a whole number, the project
23 applicant shall round up to the nearest whole number for any portion of .5 or above. Units
24 shall be affordable to households between 120 percent and 150 percent of the San Francisco
25

1 Area Median Income, with an average affordability level of 135 percent for all units provided
2 through this alternative.

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

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

16 (D) Upon first resale, the seller shall have a right to keep a percentage of the total
17 appreciation of the unit proportional to every year the original seller owns the unit as an owner
18 occupant. The remainder of the proceeds of the sale, after the first mortgage, the second
19 mortgage, and any other subordinate financing is paid off, shall be repaid to MOH. Detailed
20 resale procedures shall be specified in the Middle Income Housing Procedures Manual
21 published by MOH and approved by the Planning Commission. The Director of MOH shall
22 amend the Procedures Manual as needed with the Commission's approval.

23 (E) The City shall monitor units provided under this option during the 2- and 5-year
24 Monitoring Report specified in Section 342 of this Code and in separate resolution. Should
25 this monitoring report indicate that units constructed under this program do not meet the

1 programs stated goals of providing affordable housing to Middle Income Households, the
2 Planning Department and MOH shall consider changes to this program, including, but not
3 limited to, legislative changes.

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

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

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

21 (B) The dedicated site will result in a total amount of inclusionary units that is
22 equivalent or greater than the minimum percentage of the units that will be provided on the
23 principal site, as required by Table 419A.4. MOH may also accept dedicated sites that
24 represent the equivalent of or greater than the required percentage of units for all units be
25 provided on a collective of sites within a one-mile radius, provided the total amount of

1 inclusionary units provided on the dedicated site is equivalent to or greater than the total
2 requirements for all principal sites participating in the collective, according to the requirements
3 of Table 419A.4.

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

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

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

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

16 (G) The City may accept dedicated sites that meet the above requirements in
17 accordance with the Procedures Manual, in combination with *in-lieu* fees or on-site units,
18 provided such a combination is deemed generally equivalent by MOH to the original
19 requirement.

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

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

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

**TABLE 419A.4
HOUSING REQUIREMENTS FOR THE UMU DISTRICT**

Tier	On-Site Housing Requirement	Off-Site/In-Lieu Requirement	Middle Income Alternative*	Land Dedication Alternative for sites that have less than 30,000 square feet of developable area	Land Dedication Alternative for sites that have at least 30,000 square feet of developable area
A	18%	23%	30%	35%	30%
B	20%	25%	35%	40%	35%
C	22%	27%	40%	45%	40%

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

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

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

(2) If the rental housing project chooses to meet its inclusionary housing requirements through the land dedication option for projects less than 30,000 square feet,

1 then the project is entitled to a 5% reduction in the requirements specified above in the
2 subsection (b)(2).

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

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

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

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

13
14 **SEC. 420. VISITACION VALLEY COMMUNITY FACILITIES AND INFRASTRUCTURE FEE**
15 **AND FUND.**

16 Sections 420.1 through 420.6, hereafter referred to as Section 420.1 et seq., set forth
17 the requirements and procedures for the Visitacion Valley Community Facilities and
18 Infrastructure Fee and Fund. The effective date of these requirements shall be either
19 November 18, 2005, which is the date that the requirements originally became effective, or
20 the date a subsequent modification, if any, became effective.

21
22 **SEC 420.4. IMPOSITION OF REQUIREMENTS.**

23 (a) **Determination of Requirements.** The Department shall determine the
24 applicability of Section 420.1 et seq. to any development project requiring a *first construction*
25 *document building or site permit* and, if Section 420.1 et seq. is applicable, the net addition of

1 gross square feet of residential use subject to its requirements, and shall impose the fee
2 requirements as a condition of approval for issuance of the *first construction document building*
3 *or site permit for the development project*. The project sponsor shall supply any information
4 necessary to assist the Department in this determination.

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

10 (c) **Development Fee Collection Unit Notice to Department.** The Development
11 Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department
12 prior to issuing the first certificate of occupancy for any development project subject to Section
13 420.1 et seq. that has elected to satisfy its fee requirement with credits-in-kind improvements.
14 If the Department notifies the Unit at such time that the sponsor has not satisfied the in-kind
15 improvements requirements of Section 420.3, the Director of DBI shall deny any and all
16 certificates of occupancy until the subject project is brought into compliance.

17 (d) **Process for Revisions of Determination of Requirements.** In the event that
18 the Department or the Commission takes action affecting any development project subject to
19 Section 420.1 et seq. and such action is subsequently modified, superseded, vacated, or
20 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
21 or by court action, the procedures of Section 402(c) of this Article shall be followed.

22
23 **SEC. 420.5 4. LIEN PROCEEDINGS.**

24 If, for any reason, the fee imposed under Section 420.3 remains unpaid following
25 issuance of the certificate of occupancy, the Development Fee Collection Unit at DBI shall

1 institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any
2 deferral surcharge, a lien against all parcels used for the development project in accordance
3 with Section 408 of this Article and Section 107A.13.215 of the San Francisco Building Code.
4

5 **SEC. 420.65. VISITACION VALLEY COMMUNITY FACILITIES AND INFRASTRUCTURE**
6 **FUND.**

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

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

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

18 (d) A public hearing shall be held by the Recreation and Parks Commissions to elicit
19 public comment on proposals for the acquisition of property using monies in the Fund or
20 through agreements for financing In-Kind Community Improvements via a Mello-Roos
21 Community Facilities District that will ultimately be maintained by the Department of
22 Recreation and Parks. Notice of public hearings shall be published in an official newspaper at
23 least 20 days prior to the date of the hearing, which notice shall set forth the time, place, and
24 purpose of the hearing. The Parks Commissions may vote to recommend to the Board of
25

1 Supervisors that it appropriate money from the Fund for acquisition of property for park use
2 and for development of property acquired for park use.

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

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

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

15
16 **SEC. 421.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE.**

17 (a) **Determination of Requirements.** The Department shall determine the
18 applicability of Section 421.1 et seq. to any development project requiring a first construction
19 document ~~building or site permit~~ and, if Section 421.1 is applicable, the number of gross square
20 feet of each type of space subject to its requirements, and shall impose these requirements as
21 a condition of approval for issuance of the first construction document ~~building or site permit~~ for
22 the development project to mitigate the development impacts. The project sponsor shall supply
23 any information necessary to assist the Department in this determination.

24 (b) Department Notice to Development Fee Collection Unit at DBI of
25 Requirements. After the Department has made its final determination of the net addition of

1 gross square feet of each type of space subject to Section 421.1 et seq., it shall immediately
2 notify the Development Fee Collection Unit at DBI of its determination in addition to the other
3 information required by Section 402(b) of this Article.

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

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

12 (e) **Development Fee Collection Unit Notice to Department Prior to Issuance of**
13 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
14 provide notice in writing or electronically to the Department prior to issuing the first certificate
15 of occupancy for any development project subject to Section 421.1 et seq. that has elected to
16 fulfill all or part of the requirement with an option other than payment of a fee. If the
17 Department notifies the Unit at such time that the sponsor has not satisfied the requirements,
18 the Director of DBI shall deny any and all certificates of occupancy until the subject project is
19 brought into compliance with the requirements of Section 421.1 et seq.

20 (f) **Process for Revisions of Determination of Requirements.** In the event that the
21 Department or the Commission takes action affecting any development project subject to
22 Section 421.1 et seq. and such action is subsequently modified, superseded, vacated, or
23 reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors,
24 or by court action, the procedures of Section 402(c) shall be followed.

1 **SEC. 422.4. IMPOSITION OF COMMUNITY IMPROVEMENTS IMPACT FEE.**

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

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

15 (c) **Development Fee Collection Unit Notice to Department Prior to issuance of**
16 **the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall
17 provide notice in writing or electronically to the Department prior to issuing the first certificate
18 of occupancy for any development project subject to Section 422.1 et seq. that has elected to
19 fulfill all or part of its Community Improvements Impact Fee requirement with an In-Kind
20 Improvements Agreement. If the Department notifies the Unit at such time that the sponsor
21 has not satisfied any of the terms of the In-Kind Improvements Agreement, the Director of DBI
22 shall deny any and all certificates of occupancy until the subject project is brought into
23 compliance with the requirements of Section 422.1 et seq., either through conformance with
24 the In-Kind Improvements Agreement or payment of the remainder of the Community
25

1 Improvements Impact Fees that would otherwise have been required, plus a deferral
2 surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

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

8 **SEC. 423.4. IMPOSITION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE**
9 **IMPACT FEE.**

10 (a) **Determination of Requirements.** The Department shall determine the
11 applicability of Section 423.1 et seq. to any development project requiring a *first construction*
12 *document building or site permit* and, if Section 423.1 et seq. is applicable, the amount of
13 Eastern Neighborhoods Infrastructure Impact Fees required and shall impose these
14 requirements as a condition of approval for issuance of the *first construction document building*
15 *or site permit* for the *proposed* development project. The project sponsor shall supply any
16 information necessary to assist the Department in this determination.

17 (b) **Department Notice to Development Fee Collection Unit at DBI of**
18 **Requirements.** Prior to the issuance of a building or site permit for a development project
19 subject to the requirements of Section 423.1 et seq., the Department shall notify the
20 Development Fee Collection Unit at DBI of its final determination of the amount of Eastern
21 Neighborhoods Infrastructure Impact Fees required, including any reductions calculated for an
22 In-Kind Improvements Agreement, in addition to the other information required by Section
23 402(b) of this Article.

24 (c) **Development Fee Collection Unit Notice to Department Prior to issuance**
25 **of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall

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

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

16
17 **SEC. 424.3. APPLICATION OF VAN NESS AND MARKET AFFORDABLE HOUSING AND**
18 **NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.**

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

22 (b) Amount of Fee.

23 (i) All uses in any development project within the Van Ness and Market Downtown
24 Residential Special Use District shall pay \$30.00 per net additional gross square foot of floor
25

1 area in any portion of building area exceeding the base development site FAR of 6:1 up to a
2 base development site FAR of 9:1.

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

6 (c) Option for In-Kind Provision of Infrastructure Improvements and Fee Credits.
7 Project sponsors may propose to directly provide community improvements to the City. In such a case,
8 the City may enter into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver
9 from the neighborhood infrastructure portion (\$15.00 per net additional gross square foot of floor
10 area) of the Van Ness and Market Downtown Residential Special Use District Affordable Housing and
11 Neighborhood Infrastructure Fee from the Planning Commission, subject to the following rules and
12 requirements:

13 (1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the
14 proposed in-kind improvements meet an identified community need as analyzed in the Van Ness and
15 Market Affordable Housing and Neighborhood Infrastructure Program and where they substitute for
16 improvements that could be provided by the Van Ness and Market Downtown Residential Special Use
17 District Infrastructure Fee Fund (as described in Section 424.5). The City may reject in-kind
18 improvements if they are not consistent with the priorities identified in the Van Ness and Market
19 Affordable Housing and Neighborhood Infrastructure Program. No physical improvement or provision
20 of space otherwise required by the Planning Code or any other City Code shall be eligible for
21 consideration as part of this In-Kind Improvements Agreement.

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

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

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

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

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

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

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

23 (5) Administrative Costs. Project sponsors that pursue an In-Kind Improvements Agreement
24 will be billed time and materials for any administrative costs that the Planning Department or any
25

1 other City entity incurs in negotiating, drafting, and monitoring compliance with the In-Kind
2 Improvements Agreement.

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

19 (1) ~~The \$15.00 per gross square foot neighborhood infrastructure portion of the Van Ness~~
20 ~~and Market Downtown Residential Special Use District Affordable Housing and Neighborhood~~
21 ~~Infrastructure Fee may be reduced by the total dollar value of any infrastructure improvements~~
22 ~~provided through an In-kind Improvements Agreement recommended by the Director and approved by~~
23 ~~the Commission. For the purposes of calculating the total dollar value, the project sponsor shall~~
24 ~~provide the Department with a cost estimate for the proposed in-kind improvement(s) from two~~
25 ~~independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-~~

1 *specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it*
2 *is indexed to current cost of construction. Based on these estimates, the Director shall determine the*
3 *appropriate value of the in-kind improvements and the Commission shall reduce the infrastructure*
4 *portion of the Van Ness and Market Downtown Residential SUD Affordable Housing and*
5 *Neighborhood Infrastructure Fee otherwise due by an equal amount. No credit shall be made for land*
6 *value unless ownership of land is transferred to the City or a permanent public easement is granted, the*
7 *acceptance of which is at the sole discretion of the City.*

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

13
14 **SEC. 430. SEVERABILITY.**

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

20
21 Section 3. This section is uncodified.

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

1 **(b) The Board of Supervisors hereby authorizes the Controller to make the fee**
2 **adjustments for 2011 authorized by Section 409(b) on April 1, 2011 rather than January 1,**
3 **2011.**

4
5 Section 4. The San Francisco Administrative Code is hereby amended by repealing
6 Section 38.14, as follows:

7 ***SEC. 38.14. SEVERABILITY.***

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

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:


23 JUDITH A. BOYAJIAN
24 Deputy City Attorney
25

REVISED LEGISLATIVE DIGEST

(In Committee: 03/07/2011)

[Planning Code, Administrative Code - Development Impact and In-Lieu Fees]

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

Existing Law

Article 4 of the Planning Code contains San Francisco's requirements for development impact fees. It also contains requirements for a project sponsor to provide physical improvements, facilities, or below market rate housing units ("development impact requirements"), and the option to pay a fee in lieu of complying with a development impact requirement. These requirements are imposed by the Planning Commission as a condition of approval of the development project, and must be complied with prior to issuance of the first building permit or, in the case of a site permit, the first building permit addendum or other document that authorizes construction of the project unless the project sponsor elects to defer payment of a portion of the fees to prior to issuance of the first certificate of occupancy.

Section 409 requires the Controller's Office to issue annual reports providing certain information on development impact fees and development impact requirements and authorizes the Controller to make inflation adjustments to the fees every year based on the Annual Infrastructure Construction Cost Inflation Estimate published by the City Administrator's Capital Planning Group and approved by the City's Capital Planning Committee.

Amendments to Current Law

The proposed legislation amends Section 409 to clarify that the Controller's Annual Infrastructure Cost Inflation Adjustments to development fees do not need further action by the Board of Supervisors, to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts. An uncodified section has been added to provide that (1) if a development fee was evaluated in 2010 or 2011, it need not be included in the Controller's 2011 five-year evaluation required by Section 410 and (2) authorizing the Controller to make the 2011 Infrastructure Cost Inflation Adjustments to the development fees in April rather than January.

Because compliance with development fee or development impact requirements may not be required until prior to issuance of the first construction document (in the case of a site permit) or to prior to issuance of the first certificate of occupancy (if the project sponsor elects the deferral option), each development fee or development impact requirement section is amended to clarify that the requirements are not imposed as a condition of approval on the building or site permit but rather are imposed as a condition of approval of the development project. Section 403 is amended to clarify that the development fee(s) are payable prior to issuance of the first construction document for a building(s) and in proportion to the amount required for each building if there are multiple buildings. Additional amendments to these sections, and other sections of Article 4, are made in order to standardize language or to correct errors in cross-referencing. The Severability Clause in the former Chapter 38 of the Administrative Code, which is the only section still remaining in that Chapter, has been repealed and moved to Section 430 of the Planning Code.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

December 22, 2010

File No. 101523

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On December 7, 2010, Mayor Newsom introduced the following proposed legislation:

File No. 101523

Ordinance amending the San Francisco Planning Code by amending Section 409 to clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees authorized by the section that do not need further action by the Board of Supervisors, to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts, and by amending other sections of Article 4 to clarify language, eliminate confusion as to when requirements must be met, and correct errors in cross-referencing; amending the San Francisco Administrative Code by repealing Section 38.14 (the Severability Clause) and moving it to Section 430; adopting environmental, Planning Code Section 302, and Planning Code Section 101.1 findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*No Va project per CEQA
Guidelines, Section 15060(c)(2).*

*Nannie R. Turrell
December 22, 2010*



SAN FRANCISCO PLANNING DEPARTMENT

December 28, 2010

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

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Case Number 2010.1092T to the Board of Supervisors File No. 10-1523: Development Impact and In-Lieu Fees

Recommendation: THE PLANNING COMMISSION RECOMMENDS THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE AMENDING THE SAN FRANCISCO PLANNING CODE TO AMEND MULTIPLE SECTIONS OF ARTICLE 4 TO CLARIFY LANGUAGE, ELIMINATE CONFUSION AS TO WHEN REQUIREMENTS MUST BE MET, INCREASE CONSISTENCY BETWEEN THE WAY IMPACT FEES ARE ADMINISTERED, CORRECT ERRORS IN CROSS-REFERENCING, AND AMEND SECTION 409 TO STREAMLINE THE PROCESS OF ADJUSTING IMPACT FEES TO REFLECT INFLATION.

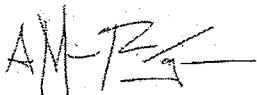
Dear Ms. Calvillo,

On December 16, 2010, the San Francisco Planning Commission (hereinafter "PC") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance. The proposed ordinance would amend Planning Code provisions for Development Impact and In-Lieu Fees.

At the December 16th hearing, the PC voted 7-0 to recommend that the Board of Supervisors (herinafter "The Board") adopt the Ordinance.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'AM-Rodgers', with a horizontal line extending to the right.

AnMarie Rodgers
Manager of Legislative Affairs

Attachments (one copy of the following):
Planning Commission Resolution No. 18240
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 18240

HEARING DATE: DECEMBER 16, 2010

Planning Code Amendment

HEARING DATE: DECEMBER 16, 2010

Project Name: Development Impact and In-Lieu Fees
Case Number: 2010.1092T
Initiated by: Mayor Newsom (BOS File No. 10-1523)
Initiated: December 7, 2010
Staff Contact: AnMarie Rodgers, Manager of Legislative Affairs
anmarie.rodgers@sfgov.org, (415) 558-6395
90-day Deadline: March 7, 2011

Recommendation: Approval

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

Reception:
415.558.6378

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APPROVING AMENDMENTS TO THE PLANNING CODE TO AMEND MULTIPLE SECTIONS OF ARTICLE 4 TO CLARIFY LANGUAGE, ELIMINATE CONFUSION AS TO WHEN REQUIREMENTS MUST BE MET, INCREASE CONSISTENCY BETWEEN THE WAY IMPACT FEES ARE ADMINISTERED, CORRECT ERRORS IN CROSS-REFERENCING, AND AMEND SECTION 409 TO STREAMLINE THE PROCESS OF ADJUSTING IMPACT FEES TO REFLECT INFLATION.

PREAMBLE

WHEREAS, Ordinance No. 108-10, adopted by the Board of Supervisors on May 17, 2010, moved those sections of the Code dealing with impact fees into a new Article 4 of the Planning Code; and

WHEREAS, the terminology used in the new Article 4 was not completely updated to create consistency across these sections; and

WHEREAS, this inconsistency creates ambiguity and makes the Code less easy to implement; and

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

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on December 16, 2010; and

Resolution No. 18240
Hearing Date: December 16, 2010

Case No 2010.1092T
Development Impact and In-Lieu Fees

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section Statutory Exemption 15273, Rates Tolls Fares and Charges; and

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

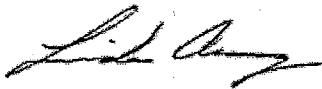
WHEREAS, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Commission has reviewed the proposed Ordinance:

MOVED,

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

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on December 16, 2010.



Linda D. Avery
Commission Secretary

AYES: Miguel, Olague, Antonini, Borden, Fong, Moore, and Sugaya

NOES: ---

ABSENT: ---

DATE: December 16, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Amendment HEARING DATE: DECEMBER 16, 2010

Project Name: Development Impact and In-Lieu Fees
Case Number: 2010.1092T
Initiated by: Mayor Newsom (BOS File No. pending)
Initiated: December 7, 2010
Staff Contact: AnMarie Rodgers, Manager of Legislative Affairs
anmarie.rodgers@sfgov.org, (415) 558-6395
90-day Deadline: March 7, 2011

Recommendation: **Approval**

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

Reception:
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Fax:
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Planning
Information:
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The action before the Commission is approval of code amendments introduced by the Mayor's Office on December 7, 2010.

CODE AMENDMENT

The proposed Ordinance amends multiple sections of Article 4 to clarify language, eliminate confusion as to when requirements must be met, increase consistency between the way impact fees are administered, and correct errors in cross-referencing. It also amends Section 409 to remove ambiguities regarding the process for adjusting impact fees to reflect inflation.

The Way It Is Now:

- City Ordinance 108-10 ("Development Impact and In-Lieu Fees") moved those sections of the Code dealing with impact fees into a new Article 4 of the Planning Code, and created a single set of definitions to apply to these sections. However, the terminology used in these sections was not completely updated to be consistent across these sections.
- The mechanism for updating the Annual Infrastructure Cost Inflation Adjustments (Section 409) currently contains ambiguity about how this process should occur – it is not clear if the Controller's Office can adjust impact fees or if a subsequent approval is needed.

The Way It Would Be:

- Sections of Article 4 amended to utilize consistent terminology, in keeping with language adopted as part of City Ordinance 108-10.
- Section 409 would be amended to clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees authorized by the section can be implemented by the Controller's Office without further approval's necessary, and that this adjustment is based *solely*

on the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator's Capital Planning Group.

- Section 409 would be further amended to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts.

REQUIRED COMMISSION ACTION

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

RECOMMENDATION

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

BASIS FOR RECOMMENDATION

The majority of these changes are technical corrections that improve the readability and ease of application of the Code. With regards to the change to Section 409, these are at the request of the Controller's Office, which was concerned about the ambiguity in the existing legislation. The clarification supports the simplification of the process of updating impact fees, and provides more certainty that these adjustments will happen in a reasonable and timely fashion.

ENVIRONMENTAL REVIEW

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

PUBLIC COMMENT

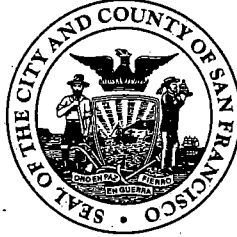
As of the date of this report, the Planning Department has received no letters regarding this legislation.

RECOMMENDATION: Approval
--

Attachments

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

BOARD of SUPERVISORS



City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
Small Business Commission, City Hall, Room 448

FROM: Angela Calvillo, Clerk of the Board

DATE: December 22, 2010

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors Land Use and Economic Development Committee has received the following, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 101523

Ordinance amending the San Francisco Planning Code by amending Section 409 to clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees authorized by the section that do not need further action by the Board of Supervisors, to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts, and by amending other sections of Article 4 to clarify language, eliminate confusion as to when requirements must be met, and correct errors in cross-referencing; amending the San Francisco Administrative Code by repealing Section 38.14 (the Severability Clause) and moving it to Section 430; adopting environmental, Planning Code Section 302, and Planning Code Section 101.1 findings.

Please return this cover sheet with the Commission's response to **Alisa Somera, Clerk, Land Use & Economic Development Committee.**

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: 1/19/2011

No Comment
 Recommendation Attached

Chairperson, Small Business Commission
Director, Office of Small Business

