

**From:** [Perry, Andrew \(CPC\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Subject:** Planning Department Memo for 245-275 Valencia Appeal Hearing (2/14)  
**Date:** Friday, February 3, 2023 9:51:51 AM  
**Attachments:** [Planning Memo to BoS\\_ 245-275 Valencia Fee Appeal.pdf](#)

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Good morning,

Attached, please find a memorandum from the Planning Department to the Board of Supervisors as it relates to the hearing for Special Order before the Board of Supervisors on February 14, 2023, regarding Appeal of the application of the Market and Octavia Community Infrastructure Fee for the Religious Worship Building Project at the Annunciation Cathedral located at 245-275 Valencia Street.

Please confirm receipt and let me know if there is anything further needed from Planning staff on this matter.

Thank you,

**Andrew Perry, Senior Planner, TDM Program Coordinator**  
**Current Planning Division**  
San Francisco Planning  
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[San Francisco Property Information Map](#)



# MEMORANDUM TO THE BOARD OF SUPERVISORS

**HEARING DATE: FEBRUARY 14, 2023**

February 3, 2023

**Subject:** Appeal of Imposition of the Market and Octavia Community Improvements Impact Fee  
**Case Number:** 2010.0681APL  
**BOS File Number:** 221293  
**Project Address:** 245-275 Valencia Street  
**Zoning:** NCT-3 (Moderate Scale Neighborhood Commercial Transit District), 50-X  
**Block/Lot:** 3532/091  
**Project Sponsor:** Paul P. Sogotis  
United Greek Orthodox Community of San Francisco  
The Annunciation Greek Orthodox Cathedral  
245 Valencia Street, San Francisco CA 94103  
**Staff Contact:** Andrew Perry – (628) 652-7430  
[Andrew.Perry@sfgov.org](mailto:Andrew.Perry@sfgov.org)

**Recommendation:** Deny the Appeal

On October 17, 2013, Building Permit Application No. 201008038065 was issued for the new construction of a two-story, approximately 13,000 square foot religious worship building (“Cathedral”) with below grade off-street parking. The project is subject to the Market and Octavia Community Improvements Impact Fee under Planning Code Section 421 because it is located within the Market and Octavia Program Area and results in new non-residential space in excess of 800 gross square feet.

In total, \$49,712 in Market and Octavia Community Impact Fees were assessed for this project. This was to have been collected at the time of building permit issuance. However, the City failed to do so and allowed the permit to be issued without fee payment.

Construction of the project began shortly after permit issuance and in late 2021, with construction nearing completion, the owner began seeking occupancy certificates for the project. Department of Building Inspection staff alerted the owner to the unpaid impact fees, which were due before occupancy certificates could be issued. To facilitate this, a final Development Impact Fee Report was issued for the project on December 5, 2022, which allowed the owner to file this fee appeal per Planning Code Section 406(a). The appeal argues that the Cathedral is a replacement building and that there is no reasonable relationship between the impact of the development and the fee charged.

## Site History and Additional Background

The United Greek Orthodox Community of San Francisco has had a presence at the subject property dating back at least to 1936, when the parish purchased the Valencia Street Theater that once stood on the site. In 1981, the church purchased the adjacent former Bausch & Lomb Optical Company building. The Valencia Street Theater was demolished after being damaged in the 1989 Loma Prieta earthquake and the church then moved fully into the Bausch & Lomb Building.

In October 1992, a building permit was filed to replace the Bausch & Lomb Building with a parking lot and to construct a new 2-story church (“Fellowship Hall”) containing approximately 35,000 gross square feet in roughly the same location as the previous Valencia Street Theater. Construction proceeded for several years and was finally deemed complete in April 2002.

In 2010, the church filed Conditional Use and building permit applications for the Cathedral building – the fees for which are the subject of this appeal - which would be built on the parking lot that replaced the Bausch & Lomb building. The Planning Commission’s approval Motion in 2011 identified payment of Market and Octavia Community Improvements Impact Fees as a condition of approval. These conditions of approval were also reproduced on the issued plans for the building permit.

The Cathedral building also triggered the Transit Impact Development Fee (TIDF) under Planning Code Section 411. However the project qualified for a Charitable Exemption that waived assessment of the TIDF. There is no similar Charitable Exemption provision for the Market and Octavia Community Improvements Impact Fee, nor any other provision in the Planning Code that would allow for waiver or reduction of that fee.

## Basis For Recommendation

- The Planning Code is unambiguous in the applicability and amount of impact fees due. It does not allow for any Department-level discretion or relief.
- Code requirements, including assessment of fees, should be applied consistently across projects and applicants.
- The project involves new construction on what has been a surface parking lot for at least the last 20 years. The appellant’s argument that this is a “replacement” building is not supported under the Planning Code.
- Despite having made the sponsor aware of required impact fees upon project approval through the conditions of approval, the City nonetheless recognizes its error in failing to collect those fees prior to the commencement of construction.
- The City’s error effectively deferred payment of impact fees *without interest or downpayment*. These terms are significantly better than those available under the City’s now-lapsed Fee Deferral Program.

**Recommendation:** Deny the Appeal