

[Planning Code - Amending Area Plan Fee Waiver Criteria for Affordable Housing]

**Ordinance amending the Planning Code by amending Section 406 to revise the criteria for waiver of Area Plan fees, including the Rincon Hill Community Infrastructure Impact Fee, the Market and Octavia Community Improvements Impact Fee, the Eastern Neighborhoods Infrastructure Impact Fee, the Balboa Park Impact Fee, and the Visitacion Valley Community Facilities and Infrastructure Impact Fee, for affordable housing projects; and making findings, including environmental findings.**

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

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

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

A. The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 110009 and is incorporated herein by reference.

B. Pursuant to Section 302 of the Planning Code, the Board finds that this ordinance will serve the public necessity, convenience, and welfare for the reasons set forth in the Planning Department staff report dated Commission Resolution No. December 9, 2010 and the Board incorporates such reasons herein by reference. A copy of the Planning Department staff report Commission Resolution No. \_\_\_\_\_ is on file with the Board of Supervisors in File No. 110009.

C. The Board of Supervisors finds that this This ordinance is in conformity with the General Plan and the Priority Policies of Planning Code Section 101.1 for the reasons set

1    forth below in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates  
2    those findings herein by reference.

3            (1)    General Plan Conformity. The proposed ordinance is consistent with the  
4    following Objectives and Policies of the General Plan:

5            **Housing Element**

6            OBJECTIVE 5: INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE  
7    CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

8            POLICY 5.1: Prioritize affordable housing projects in the planning review and approval  
9    processes, and work with the development community to devise methods of streamlining  
10 housing projects.

11          POLICY 5.4: Coordinate governmental activities related to affordable housing.

12          POLICY 11.2: Ensure housing is provided with adequate public improvements,  
13 services, and amenities.

14          OBJECTIVE 12: STRENGTHEN CITYWIDE AFFORDABLE HOUSING PROGRAMS  
15 THROUGH COORDINATED REGIONAL AND STATE EFFORTS.

16          POLICY 12.3: Encourage jurisdictions throughout the Bay Area to recognize their share  
17 in the responsibility to confront the regional affordable housing crisis.

18          In order to enhance the City's supply of affordable housing, the proposed ordinance  
19 provides a waiver from paying the required impact fee to affordable housing units (affordable  
20 to households at and below 80% AMI) that are subsidized by the Mayor's Office of Housing,  
21 the Redevelopment Agency, or the Housing Authority in a manner which maintains its  
22 affordability for a term of no less than 55 years.

23          (2)    Consistency With General Plan Priority Policies. The proposed ordinance is  
24 consistent with the eight General Plan Priority Policies set forth in Planning Code Section  
25 101.1 as follows:

1       Policy 1: That existing neighborhood serving retail uses be preserved and enhanced  
2 and future opportunities for resident employment in and ownership of such businesses  
3 enhanced.

4       The proposed ordinance does not affect existing neighborhood serving retail uses.

5       Policy 2: That existing housing and neighborhood character be conserved and  
6 protected in order to preserve the cultural and economic diversity of our neighborhood.

7       The proposed ordinance does not affect existing housing and neighborhood character.

8       Policy 3: That the City's supply of affordable housing be preserved and enhanced.

9       In order to enhance the affordable housing supply in the City, the ordinance provides a  
10 waiver from paying the required impact fee to affordable housing units (affordable to  
11 households at and below 80% AMI) that are subsidized by the Mayor's Office of Housing, the  
12 Redevelopment Agency, or the Housing Authority in a manner which maintains its affordability  
13 for a term of no less than 55 years..

14       Policy 4: That commuter traffic not impede Muni transit service or overburden our  
15 streets or neighborhood parking.

16       The proposed ordinance does not affect Muni transit service, burden on streets, or  
17 neighborhood parking.

18       Policy 5: That a diverse economic base be maintained by protecting our industrial and  
19 service sectors from displacement due to commercial office development, and that future  
20 opportunities for resident employment and ownership in these sectors be enhanced.

21       The proposed ordinance will not displace any industrial or service-sector uses.

22       Policy 6: That the City achieve the greatest possible preparedness to protect against  
23 injury and loss of life in an earthquake.

24       The proposed ordinance does not affect earthquake preparedness.

25       Policy 7: That landmark and historic buildings be preserved.

1       The proposed ordinance will not affect any landmark or historic buildings.

2       Policy 8: That our parks and open space and their access to sunlight and vistas be  
3 protected from development.

4       The proposed ordinance does not affect parks and open space.

5       D.     The Planning Commission took public testimony and reviewed, commented on,  
6 and considered the changes proposed by this ordinance at three hearings (October 28,  
7 November 18, and December 9, 2010) as part of its review of a proposed ordinance to amend  
8 multiple sections of Article 4 relating to the Visitacion Valley Community Facilities and  
9 Infrastructure Fee and Fund (Board File No. 101247). The Commission continued the matter  
10 several times, and scheduled an additional hearing for February 3, 2011. Under Planning  
11 Code Section 306.4(d)(3), the Planning Commission has 90 days from the Board's referral to  
12 review and comment on proposed legislation. The 90 days to review the ordinance in Board  
13 File No. 101247 expired on January 4, 2011 with no extension of time having been granted by  
14 the Board.

15       At the December 13, 2010 meeting of the Board's Land Use Committee, the proposed  
16 amendments to Section 406 were severed from Board File No. 101247. The remainder of  
17 ordinance was adopted by the Board and signed by Mayor Newsom on January 7, 2011  
18 (Ordinance No. 3-11). On January 4, 2011, Supervisor Maxwell introduced the proposed  
19 amendments to Section 406 as a separate ordinance (Board File No. 110009).

20       On February 17, 2011, the Department referred the legislation back to the Board  
21 without a Commission recommendation stating that the Commission had considered the  
22 proposed amendments to Section 406 in its review of Board File No. 101247, had removed  
23 consideration of the legislation from its February 3, 2011 hearing agenda, and would not be  
24 hearing the matter again. The Board of Supervisors finds that the Planning Commission has  
25 reviewed the amendments proposed by this ordinance.

1           Section 2. The San Francisco Planning Code is hereby amended by amending Section  
2 406 to read as follows:

3       **SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT PROJECT**  
4       **REQUIREMENTS.**

5           (a)     **Waiver or Reduction Based on Absence of Reasonable Relationship.**

6           (1)     The sponsor of any development project subject to a development fee or  
7 development impact requirement imposed by this Article may appeal to the Board of  
8 Supervisors for a reduction, adjustment, or waiver of the requirement based upon the absence  
9 of any reasonable relationship or nexus between the impact of development and either the  
10 amount of the fee charged or the on-site requirement.

11          (2)     Any appeal authorized by this Section shall be made in writing and filed with the  
12 Clerk of the Board no later than 15 days after the date the Department or Commission takes  
13 final action on the project approval that assesses the requirement. The appeal shall set forth  
14 in detail the factual and legal basis for the claim of waiver, reduction, or adjustment.

15          (3)     The Board of Supervisors shall consider the appeal at a public hearing within 60  
16 days after the filing of the appeal. The appellant shall bear the burden of presenting  
17 substantial evidence to support the appeal, including comparable technical information to  
18 support appellant's position. The decision of the Board shall be by a simple majority vote and  
19 shall be final.

20          (4)     If a reduction, adjustment, or waiver is granted, any change in use within the  
21 project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary  
22 requirement. If the Board grants a reduction, adjustment or waiver, the Clerk of the Board  
23 shall promptly transmit the nature and extent of the reduction, adjustment or waiver to the  
24 Development Fee Collection Unit at DBI and the Unit shall modify the Project Development  
25 Fee Report to reflect the change.

1 (b) **Waiver or Reduction, Based on Housing Affordability or Duplication of**  
2 **Fees.**

3 (1) An affordable housing unit shall receive a waiver from the Rincon Hill Community  
4 Infrastructure Impact Fee, the Market and Octavia Community Improvements Impact Fee, the Eastern  
5 Neighborhoods Infrastructure Impact Fee, the Balboa Park Impact Fee, and the Visitacion Valley  
6 Community Facilities and Infrastructure Impact Fee if the affordable housing unit:

7 (A) is affordable to a household at or below 80% of the Area Median Income (as published  
8 by HUD), including units that qualify as replacement Section 8 units under the HOPE SF program;

9 (B) is subsidized by MOH, the San Francisco Housing Authority, and/or the San Francisco  
10 Redevelopment Agency; and

11 (C) is subsidized in a manner which maintains its affordability for a term no less than 55  
12 years, whether it is a rental or ownership opportunity. Project sponsors must demonstrate to the  
13 Planning Department staff that a governmental agency will be enforcing the term of affordability and  
14 reviewing performance and service plans as necessary.

15 ~~The Planning Commission shall give special consideration to offering reductions or waivers of~~  
16 ~~the impact fee to housing projects on the grounds of affordability in cases in which the State of~~  
17 ~~California, the Federal Government, MOH, the San Francisco Redevelopment Agency, or other public~~  
18 ~~agency subsidies target new housing for households at or below 50% of the Area Median Income as~~  
19 ~~published by HUD, including units that qualify as replacement Section 8 units under the HOPE SF~~  
20 ~~program. This waiver clause intends to provide a local 'match' for these deeply subsidized units and~~  
21 ~~should be considered as such by relevant agencies. Specifically these units may be rental or ownership~~  
22 ~~opportunities but they must be subsidized in a manner which maintains their affordability for a term no~~  
23 ~~less than 55 years. Project sponsors must demonstrate to Department staff that a governmental agency~~  
24 ~~will be enforcing the term of affordability and reviewing performance and service plans as necessary;~~  
25 ~~usually this takes the form of a deed restriction.~~

1           ~~(2) — The Planning Department shall publish an annual schedule of specific values for~~  
2 ~~waivers and reductions available under this subsection. Department staff shall apply these waivers~~  
3 ~~based on the most recent schedule published at the time that fee payment is made.~~

4           (32) Projects that meet the requirements of this subsection are eligible for a 100  
5 percent fee reduction until an alternative fee schedule is published by the Department. ~~Ideally~~  
6 ~~some contribution will be made to Community Improvement Programs for specific areas, as these units~~  
7 ~~will place an equal demand on community improvements infrastructure.~~

8           (3) This waiver clause shall not be applied to units built as part of a developer's  
9 efforts to meet the requirements of the Inclusionary Affordable Housing Program, and Section  
10 415 of this Code.

11           (4-c) **Waiver based on Duplication of Fees.** The City shall make every effort not to  
12 assess duplicative fees on new development. In general, project sponsors are only eligible for  
13 fee waivers under this Subsection if a contribution to another fee program would result in a  
14 duplication of charges for a particular type of community infrastructure. The Department shall  
15 publish a schedule annually of all known opportunities for waivers and reductions under this  
16 clause, including the specific rate. Requirements under Section 135 and 138 of this Code do  
17 not qualify for a waiver or reduction. Should future fees pose a duplicative charge, such as a  
18 Citywide open space or childcare fee, the same methodology shall apply and the Department  
19 shall update the schedule of waivers or reductions accordingly.

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

22 By: \_\_\_\_\_  
23 JUDITH A. BOYAJIAN  
24 Deputy City Attorney  
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