

LEGISLATIVE DIGEST

(Substituted 7/11/23)

[Planning, Building Codes - Development Impact Fee Indexing, Deferral, and Waivers;
Adoption of Nexus Study]

Ordinance amending the Planning Code to 1) modify the annual indexing of certain development impact fees, with the exception of inclusionary housing fees; 2) provide that the type and rates of applicable development impact fees, with the exception of inclusionary housing fees, shall be determined at the time of project approval; 3) exempt eligible development projects in PDR (Production, Distribution, and Repair) Districts, and the C-2 (Community Business) and C-3 (Downtown Commercial) Zoning Districts from all development impact fees for a three-year period; 4) allow payment of development impact fees, with the exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the first certificate of occupancy; and 5) adopt the San Francisco Citywide Nexus Analysis supporting existing development impact fees for recreation and open space, childcare facilities, complete streets, and transit infrastructure and making conforming revisions to Article 4 of the Planning Code; amending the Building Code to allow payment of development impact fees, with the exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the first certificate of occupancy and repealing the fee deferral surcharge; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Existing Law

The Mitigation Fee Act (California Government Code Section 66000 et seq.) requires that public agencies make certain findings to support the imposition of development impact fees. Article 4 of the Planning Code contains the City's development impact fees. Many of these fees are assessed on a citywide or neighborhood basis for the following infrastructure categories: recreation and open space, childcare, streetscape and pedestrian infrastructure, bicycle infrastructure, and transit infrastructure. Planning Code Section 410 requires that the Planning Department and the Controller undertake a comprehensive evaluation of development fees every five years.

Pursuant to Planning Code Section 409, the Controller is charged with reviewing development impact fees and adjusting the fees annually on January 1. With the exception of the Inclusionary Affordable Housing Fee set forth in Planning Code Section 415 et seq., development impact fees are adjusted according to the Annual Infrastructure Construction

Cost Inflation Estimate (“AICCIE”). The applicable AICCIE rate is determined by the Office of the City Administrator’s Capital Planning Group.

The procedure for assessment and collection of development impact fees is set forth in Planning Code Section 402 and Building Code Section 107A.13. Currently, development impact fees are assessed at time of building permit or site permit, and payment of the fees is due prior to the issuance of the first construction document. Fees continue to escalate per the AICCIE until the project sponsor pays the fees. Previously, under Building Code Section 107A.13.3, developers could defer payment of development impact fees until time of first certificate of occupancy, upon payment of a deferral fee surcharge. That deferral program expired on July 1, 2013.

Amendments to Current Law

This ordinance would modify the indexing, assessment, and time of payment for development impact fees; waive fees for certain development projects in the C-2 and PDR Districts; and adopt the Citywide Nexus Analysis supporting existing development impact fees for recreation and open space, childcare facilities, complete streets, and transit infrastructure.

Development Fee Indexing (Planning Code Section 409):

The ordinance would replace the existing AICCIE method of annual fee escalation with a flat 2% escalation rate. The ordinance would not change indexing of the inclusionary housing fee (Section 415 et seq.).

Development Fee Assessment (Planning Code Section 402(e)):

The ordinance would freeze the applicability and rates of development impact fees, with the exception of inclusionary housing fees under Section 415 et seq., at the following milestones:

Project Type	Fee Assessment Milestone
Projects approved after the effective date of ordinance	No further fee escalation or applicable new fees after time of Final Approval, as defined in the ordinance
Projects approved, but have not yet received site permit, before the effective date of ordinance	No further fee escalation or applicable new fees after the effective date of the ordinance
Projects that received first site or building permit before effective date of ordinance	Fees assessed at time of first site or building permit
Projects subject to a development agreement executed before the effective date of ordinance	Fees assessed pursuant to the development agreement and no later than the earlier of site or building permit issuance
Projects subject to a development agreement executed on or after the effective date of ordinance	Fees assessed at the earlier of site or building permit issuance, unless otherwise agreed by the parties

This ordinance would provide that in the event of a conflict between Section 402 and a development agreement, the terms of the development agreement shall govern.

Development Fee Reassessment for Project Modifications, Extensions, and Renewals (Planning Code Section 402(e)):

If a development project requires a modification, renewal, or extension, the ordinance would prescribe procedures for reassessing development impact fees, with the exception of inclusionary housing fees under Section 415 et seq. A legislatively-authorized reduction in fees would not trigger reassessment of fees for the project, unless such a project also requires a modification, renewal, or extension.

In the event of a modification, renewal, or extension, the Planning Department would reassess fees as follows:

Project Type	Reassessment
Projects increasing Gross Floor Area of a use	Types of fees in effect at time of Project Approval would continue to apply, but rates of fees in effect at time of modification would be assessed on the new or additional Gross Floor Area
Projects reducing Gross Floor Area	Types and rates of fees in effect at time of Final Approval assessed on the remaining Gross Floor Area
Projects increasing or reducing Gross Floor Area that trigger applicability of new fees or different rates	Entire project square footage is subject to the types of fees in effect at time Final Approval, but rate in effect at the time of modification would apply
Projects receiving a renewal or extension	Types and rates of fees in effect at time of modification assessed on the entire project square footage

The procedures governing reassessment after modification, renewal, or extension would also apply to projects subject to a development agreement, unless the development agreement provides otherwise.

Development Fee Collection (Building Code Section 107A.13.3.1 and Planning Code Section 403):

The ordinance would enable project sponsors to defer payment of development impact fees, with the exception of fees that must be deposited into the Citywide Affordable Housing Fund. Specifically, the ordinance would:

- require payment of 15 to 20% of the total development impact fees prior to issuance of the first construction document;

- allow a project sponsor to defer payment of the balance of development impact fees prior to issuance of the first certificate of occupancy;
- provide that fee deferral is available to project sponsors that have not yet paid a development impact fee as of the effective date of this ordinance, notwithstanding a condition of approval that required the fee to be paid prior to issuance of the first construction document;
- provide that projects subject to a development agreement are also eligible for fee deferral, unless the parties agree otherwise.

Development Impact Fee Waivers for PDR, C-2, and C-3 Districts (Planning Code Section 406):

This ordinance would also waive development impact fees for projects in the PDR Districts that meet certain square footage and location requirements, contain no residential uses, and submit a complete Development Application on or before December 31, 2026, including any projects that obtain final approval prior to the effective date of the ordinance that have not already paid development impact fees. In the PDR Districts, the fee waiver would be limited to square footage devoted to Retail or PDR Uses.

In the C-2 and C-3 Districts, development impact fee waivers would be limited to square footage devoted to any of the following uses: Hotel, Restaurant, Bar, Outdoor Activity, or Entertainment. The waivers would be available to projects that submit a complete Development Application on or before December 31, 2026, including any projects that obtain final approval prior to the effective date of the ordinance that have not already paid development impact fees.

Citywide Nexus Analysis Adoption and Code Updates:

The ordinance would adopt the Nexus Analysis and the San Francisco Infrastructure Level of Service Analysis prepared by Hatch Associates Consultants, Inc., dated December 2021 (collectively "Nexus Study"), which support existing Citywide and neighborhood specific development impact fees for four infrastructure categories: recreation and open space, childcare, complete streets, and transit infrastructure. The ordinance contains findings that the Nexus Study satisfies the requirements of the Mitigation Fee Act. This ordinance would make conforming revisions to Article 4 of the Planning Code to reflect the updated Nexus Study.

This ordinance does not establish, increase, or impose a development impact fee for the purpose of the Mitigation Fee Act.

This ordinance does not modify any aspect of the Inclusionary Affordable Housing Fee, set forth in Planning Code section 415 et seq.