



# SAN FRANCISCO PLANNING DEPARTMENT

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July 23, 2012

Ms. Angela Calvillo, Clerk  
Honorable Mayor Edwin Lee

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

**Re: Transmittal of Planning Department Case Number 2012.0814T:  
Amendments relating to the Transit Impact Development Fee  
Board File No. 120523  
Planning Commission Recommendation: Approval with Modifications**

Dear Honorable Mayor Lee and Ms. Calvillo,

On June 19, 2012, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed amendments to Article 4 of the Planning Code introduced by Mayor Edwin Lee and co-sponsored by Supervisors Christina Olague and Scott Wiener. At the hearing, the Planning Commission recommended approval with modifications.

The proposed text and fee changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15273. Pursuant to San Francisco's Administrative Code Section 8.12.5 "Electronic Distribution of Multi-page Documents", the Department is sending electronic documents and one hard copy. Additional hard copies may be requested by contacting Alicia John-Baptiste at 558-6547.

Mayor Lee, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commissions.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "AM-Rodgers".

AnMarie Rodgers  
Manager of Legislative Affairs

1650 Mission St.  
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cc:

Supervisor Christina Olague

Supervisor Scott Wiener

Jason Elliott, Mayor's Office

Cheryl Adams, City Attorney

David Greenburg, City Attorney

Attachments (one copy of the following):

Planning Commission Resolution

Planning Department Executive Summary



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Resolution No. 18667

HEARING DATE: JULY 19, 2012

*Project Name:* **Amendments relating to the Transit Impact Development Fee**  
*Case Number:* 2012.0814T [Board File No. 120523]  
*Initiated by:* Mayor Ed Lee / Introduced May 15, 2012  
*Staff Contact:* Alicia John-Baptiste, Chief of Staff  
alicia.johnbaptiste@sfgov.org, 415-558-6547  
*Reviewed by:* AnMarie Rodgers, Manager of Legislative Affairs  
*Recommendation:* **Recommend Approval with Modifications**

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**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE ARTICLE 4 BY: 1) MAKING TECHNICAL CORRECTIONS TO SPECIFIED DEFINITIONS IN SECTION 401 RELATING TO THE TRANSIT IMPACT DEVELOPMENT FEE (TIDF); AND 2) AMENDING SECTIONS 408, 411.1 THROUGH 411.5, 411.7 AND 411.8 TO INCREASE TIDF RATES AND CLARIFY TIDF IMPLEMENTATION AND COLLECTION.**

### PREAMBLE

Whereas, on May 15, 2012, Mayor Ed Lee and co-sponsors Supervisor Scott Wiener and Supervisor Christina Olague introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 120523 which would amend Article 4 of the Planning Code to make technical corrections to definitions relating to the TIDF, increase TIDF rates, and clarify TIDF implementation and collection; and

Whereas, on July 19, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed text and fee changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15273; 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 the applicant, Department staff, and other interested parties; and

Whereas, all the 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; and

**MOVED**, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect.

The six recommended modifications include:

1. **Introduce a Policy Credits Program With No Cap on the Amount of Credits a Small Business Project Eligible for the Policy Credits Program May Receive;**
2. **Extend the Grandfathering Period for Non-Profit and Institutional Uses;**
3. **Introduce a Grandfathering Period to January 1, 2014 for Uses Not Currently Subject to the TIDF**
4. **Retain the Five-Year Timeframe for Inactive Uses;**
5. **Provide SFMTA with Collection and Appeal Procedures and Authority; and**
6. **Clarify the Accessory Use Provision to Exclude Residential.**

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The Transit Impact Development Fee (TIDF) serves as the City's primary mechanism to offset the impacts to the transit system of new development;
2. The TIDF base rates have not been updated since 2004 and the annual fee-indexing has not kept pace with the increase in cost to provide transit service since 2004;
3. The SFMTA completed a nexus study update to the TIDF in 2011, as required by law;
4. The transition from TIDF's inclusion in Chapter 38 of the Administrative Code to Article 4 of the Planning Code has resulted in administrative inconsistencies and difficulty in collecting the TIDF in some cases;
5. The Commission believes that the TIDF should be aligned in its application and policies to the greatest extent possible with the proposed Transportation Sustainability Fee;
6. The Commission recommends implementing a Policy Credits program under the TIDF which would provide up to three percent of annual projected TIDF revenue on a first-come, first-served basis, in the form of credits to qualifying uses and that those qualifying uses would be comprised of projects which build less than the allowable maximum parking in Zoning Districts which have such maximums and projects which are non-formula retail small businesses occupying up to 5,000 square feet of existing vacant space;
7. Consistent with the expressed policy direction of the Small Business Commission, the Commission recommends providing 100 percent fee waivers for small businesses eligible under the Policy Credits Program;

8. The Commission recommends extending the grandfathering period for projects subject to the TIDF such that projects under 3,000 gross square feet with a building or site permit issued prior to December 1, 2012 will not be subject to the TIDF;
9. The Commission supports the development of non-profit and institutional uses and recognizes that these uses require lead time to modify their capital planning to accommodate a new fee and therefore the Commission recommends extending the grandfathering period provided to these uses to January 1, 2014;
10. The Commission recognizes that uses defined as Automotive Services and Wholesale Storage of Materials and Equipment are not currently subject to the TIDF and that such uses require lead time to accommodate a new fee, and therefore the Commission recommends establishing a grandfathering period for these uses, to January 1, 2014;
11. Consistent with the expressed policy direction of the Small Business Commission, the Commission recommends retaining the five-year inactivity clause as described in the existing TIDF ordinance;
12. The Commission recommends providing the SFMTA with the authority to collect TIDF for projects which have already been issued a Temporary Certificate of Occupancy and/or a Certificate of Final Completion and the Commission further recommends providing project sponsors with an appeal procedure in those cases where the SFMTA is the agency responsible for collecting the TIDF;
13. The proposed TIDF ordinance does not extend to residential uses and the Commission recommends clarifying the provision which levies the TIDF on accessory uses to explicitly exclude uses which are accessory to residential, provided, however that the TIDF does apply on the portion of a mixed use development which is not residential;
14. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

**TRANSPORTATION ELEMENT**

THE TRANSPORTATION ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE IMPORTANT COMPONENTS OF THE LOCAL AND REGIONAL TRANSPORTATION SYSTEM.

**OBJECTIVE 1**

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

**POLICY 1.3**

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

*The proposed ordinance directly addresses the need for enhanced transit service to accommodate commuters. By requiring that new non-residential development pay an impact fee to offset the impacts on transit of that new development, and by directing revenue from that fee to Muni operations and capital improvements, the City is able to provide the transit service necessary to support commuters en route to their place of employment.*

**OBJECTIVE 11**

ESTABLISH PUBLIC TRANSIT AS THE PRIMARY MODE OF TRANSPORTATION IN SAN FRANCISCO AND AS A MEANS THROUGH WHICH TO GUIDE FUTURE DEVELOPMENT AND IMPROVE REGIONAL MOBILITY AND AIR QUALITY.

**POLICY 11.2**

Continue to favor investment in transit infrastructure and services over investment in highway development and other facilities that accommodate the automobile.

**POLICY 11.3**

Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

*The proposed ordinance explicitly funds investments in the City's transit system. It also requires that developers address transit concerns by paying the Transit Impact Development Fee.*

**OBJECTIVE 21**

DEVELOP TRANSIT AS THE PRIMARY MODE OF TRAVEL TO AND FROM DOWNTOWN AND ALL MAJOR ACTIVITY CENTERS WITHIN THE REGION.

**POLICY 21.1**

Provide transit service from residential areas to major employment centers outside the downtown area.

**POLICY 21.2**

Where a high level of transit ridership or potential ridership exists along a corridor, existing transit service or technology should be upgraded to attract and accommodate riders.

**POLICY 21.11**

Ensure the maintenance and efficient operation of the fleet of transit vehicles.

*The proposed ordinance supports these policies by establishing a means to generate revenue to provide transit service to employment centers, accommodate riders on high-volume transit corridors, fund transit service upgrades and technology, and invest in maintaining and efficiently operating the transit fleet of vehicles.*

15. The proposed ordinance is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed Ordinance will have no adverse effect on the City's supply of neighborhood-serving retail uses nor on opportunities for resident employment in and ownership of such businesses.*

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

*The proposed Ordinance will have no adverse effect on existing housing and neighborhood character.*

- C) The City's supply of affordable housing will be preserved and enhanced:

*The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.*

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

*The proposed Ordinance will support MUNI service by providing needed funding to supply and operate the transit service required to accommodate new development. The proposed Ordinance will not overburden the streets or neighborhood parking and may reduce the burden on these through funding transit service.*

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

*The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.*

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.*

- G) That landmark and historic buildings will be preserved:

*Landmarks and historic buildings would be unaffected by the proposed amendments.*

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 19, 2012.



Linda Avery  
Commission Secretary

AYES: Wu, Antonini, Borden, Moore, Sugaya

NAYS:

ABSENT: Fong

ADOPTED: July 19, 2012





# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code Text Change and Fee Amendment

HEARING DATE: JULY 19, 2012

*Project Name:* **Amendments relating to the Transit Impact Development Fee**  
*Case Number:* 2012.0814T [Board File No. 120523]  
*Initiated by:* Mayor Ed Lee / Introduced May 15, 2012  
*Staff Contact:* Alicia John-Baptiste, Chief of Staff  
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### PLANNING CODE AMENDMENT

The proposed Ordinance would amend Article 4 of the Planning Code by: 1) making technical corrections to specified definitions in Section 401 relating to the Transit Impact Development Fee (TIDF); and 2) amending Sections 408, 411.1 through 411.5, 411.7 and 411.8 to increase TIDF rates and clarify TIDF implementation and collection.

#### The Way It Is Now:

The Transit Impact Development Fee (TIDF) is an impact fee levied on most non-residential new development citywide to offset new development's impacts on the City's transit system. Revenue generated by the fee is directed to the San Francisco Municipal Transportation Agency (SFMTA) and is used to fund Muni capital and system maintenance. Residential projects, projects under 3,000 gross square feet, projects considered "charitably exempt", and some specific land uses, such as automotive services, are currently exempted from the fee. Development projects may be given a credit against the fee for a prior use so long as the prior use was active on the site within five years of the new development's application. When a new development project constitutes a change of use, the new development is charged the difference between the TIDF rate for Office and the TIDF rate for the proposed use, when such a difference exists.

The TIDF was first enacted by local ordinance in 1981 as an outgrowth of the work on the Downtown Plan.<sup>1</sup> The TIDF was created to acknowledge that new office development in the Downtown would result in increased demand for transit to accommodate that area's new workers. The original TIDF preceded the creation at the State level of the Mitigation Fee Act, which subsequently established a framework by which local jurisdictions could identify the impacts of new development on City services and adopt "impact fees" to address those impacts.<sup>2</sup> While cities had used "exactions" to fund

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<sup>1</sup> The San Francisco Transit Impact Development Fee was first established by Ordinance No. 224-81.

<sup>2</sup> The California Mitigation Fee Act was enacted in 1987. See "A Short Overview of Development Impact Fees". Peter N. Brown, City Attorney, City of Carpinteria, and Graham Lyons, Deputy City Attorney, City of Carpinteria, February 27, 2003.

infrastructure projects since the 1920s, the San Francisco Transit Impact Development Fee Ordinance remained the only developer fee specifically dedicated to public transit for more than 20 years after its adoption.<sup>3</sup> Chapter 38 of the Administrative Code held the first TIDF regulations. Beginning in 1981, the Public Utilities Commission, a predecessor to the SFMTA, was given responsibility for the assessment, imposition, and collection of the TIDF.

In 2001, the SFMTA commissioned a nexus study on the TIDF which determined that new non-residential uses outside the Downtown core also have an impact on the City's transit system. In 2004, the Board of Supervisors enacted a new TIDF ordinance which expanded the application of the fee citywide to most new non-residential uses and which increased the rates at which the TIDF is charged.<sup>4</sup>

In 2010, the Board of Supervisors enacted changes to the Planning and Building Codes to consolidate assessment and imposition of most impact fees with the Planning Department, and collection of those fees with the Department of Building Inspection. These changes were encompassed in the creation of Article 4 of the Planning Code. Article 4 also established rules and procedures for updating and reporting on impact fees, and moved the TIDF from the Administrative Code to the Planning Code.

### **The Way It Would Be:**

The proposed ordinance makes changes to how the TIDF is applied and expands the types of new development subject to the TIDF, while still exempting residential development. The proposed ordinance also modifies definitions contained in the TIDF provisions, tying them to those already established in the Planning Code. It clarifies the roles of the SFMTA, the Planning Department, and the Department of Building Inspection as pertains to assessing, imposing, and collecting the TIDF, and establishes that TIDF updates will be conducted according to the provisions established in Article 4 of the Planning Code. Finally, the proposed ordinance increases the TIDF rates charged to most land uses, decreases the rate charged to Production, Distribution, and Repair (PDR) and to Museums, and modifies the way that change-of-use TIDF rates are determined. Base TIDF rates were last changed in 2004.

### ***Application Changes***

The proposed TIDF ordinance lowers the exemption threshold under which new development is not subject to the fee from 3,000 gross square feet to 800 gross square feet. This is the same threshold applied under the Eastern Neighborhoods and Market/Octavia Plan Area impact fees. The proposed ordinance provides a grandfathering provision, such that projects issued building or site permits prior to October 1, 2012 would be subject to the 3,000 gross square footage exemption, rather than the 800 gross square footage exemption. The proposed ordinance clarifies that the TIDF is calculated on a gross square footage basis, which has been the practice but which is not explicitly called out in the existing ordinance.

The proposed ordinance also extends the TIDF to apply to non-profit and institutional uses by eliminating the existing exemption for new development meeting the "charitably exempt" criteria

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<sup>3</sup> San Francisco Planning Department, prepared by Nelson\Nygaard Consulting (2001), Transit Impact Development Fee Analysis, Final Report for San Francisco, 1-1.

<sup>4</sup> Ordinance Number 199-04, approved August 5, 2004.

(Section 411.8). As with the change in exemption threshold noted above, the proposed ordinance provides a grandfathering provision for these types of projects, such that those new development projects currently considered charitably exempt which file an application for environmental evaluation, categorical exemption, or preliminary project assessment by October 1, 2012 are not subject to the fee. The grandfathering provision would allow grandfathering of non-profit and institutional uses in Redevelopment Areas if these projects file relevant applications by October 1, 2012.

The proposed ordinance makes a number of other changes which have the effect of expanding the types of projects subject to the TIDF. It removes the existing exemption for projects categorized as “Automotive Services” and as “Wholesale Storage of Materials and Equipment”, by bringing those two categories of projects under the broader PDR definition. It eliminates the exemption for projects on property “beneficially owned” by the City and County of San Francisco. It also clarifies that accessory uses are subject to the fee if they fall within a land use category subject to the fee, even if the use to which they are accessory is exempted from the fee.

The proposed ordinance makes one other change which could affect the number or type of projects subject to the TIDF. Currently, new development receives a credit against the TIDF for a prior use on the applicable site if the prior use was active on the site within the five years before the new development application is submitted. Under the proposed ordinance, this provision is eliminated and instead new development may receive a credit for a prior use only if the prior use was not “abandoned” as defined in the Planning Code (Sections 178(d), 183, and 186.1(d)). The Planning Code’s definition of abandonment pertains only to conditional and nonconforming uses and establishes a three-year timeframe of inactivity to constitute abandonment. The effect of this change, therefore, is that it 1) allows new development a prior use credit with no time limit if the prior use was principally permitted; and 2) shortens the five-year timeframe of inactivity to three years if the prior use was either a conditional or nonconforming use.

### *Definition Changes*

The proposed ordinance modifies land use definitions under the TIDF so that they are consistent with definitions already existing in the Planning Code. As noted above, the TIDF was originally established in the Administrative Code and terms and definitions created or updated in the Planning Code have not always been reflected in the Administrative Code. The proposed ordinance makes the following changes to definitions:

- Provides a Planning Code citation to the definition of “Child care facilities” (Section 209.3(e) and (f))
- Excludes “animal services as defined in Section 224(a) and (b)” from the definition of “Medical and Health Services”
- Establishes a definition for “Museum”<sup>5</sup>
- Deletes “laundering and cleaning and pressing” from the definition of “Retail/Entertainment”

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<sup>5</sup> “Museum.” A permanent institution open to the public, which acquires, conserves, researches, communicates and exhibits the heritage of humanity or the environment.

The proposed ordinance creates a definition for “Museum” because the nexus study underlying the proposed TIDF rate update identified a lower trip generation rate for Museums compared to other Cultural/Educational/Institutional uses, the land use category which currently encompasses Museums.

***Role-Clarifying Changes***

The proposed ordinance establishes two different procedures for assessing and imposing the TIDF, depending on the date when a building or site permit for a new development project was first issued. For projects where a building or site permit was issued prior to July 1, 2010, under the proposed ordinance, the SFMTA assesses and imposes the TIDF. For projects issued a building or site permit after July 1, 2010, the Planning Department assesses and imposes the TIDF. In both cases, responsibility for collecting the TIDF rests with the Department of Building Inspection. The proposed ordinance establishes these two different procedures because, prior to July 1, 2010, the TIDF resided in the Administrative Code and the SFMTA was responsible for assessing, imposing, and collecting the fee. On July 1, 2010, the Article 4 provisions covering impact fees became effective and gave responsibility to the Planning Department to assess and impose the TIDF, and responsibility to the Department of Building Inspection to collect the TIDF.

In addition, the proposed ordinance establishes that updates to and reporting on the TIDF will be done in accordance with the rules and procedures delineated in Article 4, Section 410, which covers these for impact fees generally.

***Fee Rate Changes***

The proposed ordinance amends the TIDF by increasing some rates, decreasing the rate for PDR and Museum projects, and modifying the calculation for determining the rate paid for projects which are a change-of-use. The current and proposed TIDF rates are as follows:

<b>Land Use Category</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
Office (MIPS)	\$12.06	\$12.64
Cultural/Institution/Education	\$12.06	
<i>Day Care/Community Center</i>	\$12.06	\$13.30
<i>Post-Secondary School</i>	\$12.06	\$13.30
<i>Museum</i>	\$12.06	\$11.05
<i>Other Institutional</i>	\$12.06	\$13.30
Medical and Health Services	\$12.06	\$13.30
Production/Distribution/Repair	\$ 9.65	\$ 6.80
Retail/Entertainment	\$12.06	\$13.30
Visitor Services	\$ 9.65	\$12.64

For projects which are a change-of-use, the TIDF is currently charged by calculating the differential between the TIDF rate for the proposed use and the TIDF rate for Office. Under the proposed ordinance, the TIDF owed for change-of-use projects would be based on the difference between the TIDF rate for the proposed use and the TIDF rate for the existing use, Office or otherwise. In both cases, the TIDF is only charged if the TIDF rate for the proposed use is higher than the TIDF rate for the existing use.

## **REQUIRED COMMISSION ACTION**

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

## **RECOMMENDATION**

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

## **BASIS FOR RECOMMENDATION**

On May 15, 2012, Mayor Lee, along with co-sponsors Supervisor Wiener and Supervisor Olague, introduced both the proposed TIDF ordinance as well as a proposed ordinance establishing the Transportation Sustainability Program. The Transportation Sustainability Program (TSP) is designed to resolve the inconsistency between the City's adopted policies and programs – which emphasize multimodal transportation solutions – and the focus on speed of automobile throughput which currently exists under the City's review of environmental impacts of proposed projects under the California Environmental Quality Act (CEQA). The TSP has two components: 1) changing the methodology used to analyze transportation impacts under CEQA by eliminating automobile Level of Service as a metric and replacing it with a metric that takes into account all modes of transportation; and 2) establishing a citywide Transportation Sustainability Fee (TSF) to offset impacts of new development to the City's transportation network. Taken together, the change to the transportation impact analysis methodology and the establishment of a citywide transportation impact fee ensures that development's cumulative impacts to the transportation system are offset by improvements to the system as whole, in line with City policies and priorities, including the longstanding *Transit First* policy<sup>6</sup>.

The Planning Department is preparing an Environmental Impact Report (EIR) to study the changes proposed under the TSP and their effects on the cumulative transportation system impacts of twenty years of project development. Because the TSP cannot move forward until the EIR is completed and certified, the TSP ordinance is being held at the Board of Supervisors until CEQA review is complete, enabling the Planning Commission to provide a recommendation to the Board.

In the absence of the TSP, the TIDF serves as the City's mechanism to offset new development's impacts on the transit system. Although the TIDF is indexed each year to adjust for inflation, no adjustment to

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<sup>6</sup> In 1973, the San Francisco City Planning Commission and Board of Supervisors adopted the Transit First policy, giving top priority to public transit investments as the centerpiece of the City's transportation policy.

the TIDF base rates has been made since it was last updated in 2004, and the fee indexing has not kept pace with the increase in costs associated with providing the transit service required by new development. In addition, with the consolidation of the TIDF under Article 4 of the Planning Code, a number of technical and clarifying corrections are required for the appropriate assessment and imposition of the TIDF. For these reasons, the Department supports an update to the TIDF ordinance.

However, the Department recommends a number of modifications to the proposed ordinance, to bring the ordinance into greater alignment with the proposed TSP and to further correct administrative concerns. Those modifications are described below.

***Recommendation #1: Introduce a Policy Credits Program***

The proposed TSP ordinance establishes a Policy Credits program to support desirable programs and/or policy outcomes by providing a reduction to or waiver from the TSF. The Policy Credits program would provide fee reductions to or waivers from the TSF to the following types of projects:

- Projects which build less than the maximum allowed parking in those Zoning Districts with such maximums
- Non-formula retail small businesses using existing vacant space less than 5,000 square feet
- Affordable housing projects
- Small residential projects, defined as projects of 20 units or less

The Department recommends implementing the Policy Credits program developed under the TSP with the proposed update of the TIDF. Because the TIDF does not apply to residential, the Department recommends establishing a Policy Credits program for projects building reduced parking and for non-formula retail small businesses using existing vacant space less than 5,000 square feet. Similar to the TSP's Policy Credits program, the TIDF Policy Credits program could allocate three percent of annual projected TIDF revenue (approximately \$740,000), which would be applied to projects qualifying for the Policy Credits on a first-come, first-served basis. Projects could receive a Policy Credit up to 90 percent of the total fee owed. The SFMTA Board has indicated that while it is supportive of the Policy Credits program as it applies to the TSP, it would like to cap the total Policy Credit amount provided to any project to recognize that all new development has an impact on the transportation system. A cap of 90 percent would serve that purpose.

In conducting outreach on the proposed TIDF, staff has heard concern from small businesses that the reduction in the square footage exemption threshold would result in more fees for more projects. Establishing the Policy Credits program would allow small businesses occupying up to 5,000 square feet to avoid paying the TIDF, where as the current exemption threshold is 3,000 square feet. In addition, the Department recommends extending the grandfathering period for the square footage threshold change to December 1, 2012, from October 1, 2012, as the proposed TIDF ordinance is unlikely to be enacted prior to November 2012.

***Recommendation #2: Extend the Grandfathering Period for Non-Profit and Institutional Uses***

The proposed TSP ordinance levies the TSF on all new development, including residential and non-profit and institutional uses, with the exception of single-family homes and those projects qualifying for Policy Credits as described above. In order for the proposed TIDF to align with the proposed TSP, the

Department supports extending the TIDF to non-profit and institutional uses. However, the proposed TSP is approximately 18 months from implementation, providing non-profit and institutional uses with time to adjust their capital planning and programming to account for imposition of a new impact fee. The Department recommends extending the grandfathering period provided in the proposed TIDF to similarly allow lead time for these types of projects to adjust their fundraising or other capital funding mechanisms in order to accommodate the TIDF. The Department recommends extending the grandfathering period from October 1, 2012 to January 1, 2014, or approximately the date at which the TSP may take effect if adopted.

***Recommendation #3: Retain the Five-Year Timeframe for Inactive Uses***

As noted above, the proposed TIDF changes the timeframe under which a prior use must be “active” to conform to the Planning Code’s definition of abandoned uses. However, that definition applies only to cases of conditional or nonconforming uses. The Department has heard concern from small businesses about this proposed change. The Department also believes that the language in the current TIDF more clearly and accurately reflects the intent to provide a prior use credit when a site has been active in the preceding five years. Therefore, the Department recommends retaining the language in the current TIDF which states that “a credit for prior use may be given only if the prior use was active on the site within five years before the date of the application for a building or site permit for the proposed use”.

***Recommendation #4: Provide SFMTA with Collection and Appeal Procedures and Authority***

In July 2010, Article 4 of the Planning Code established the Department of Building Inspection (DBI) as the responsible party for collection of impact fees, including the TIDF. While each impact fee is due at a prescribed time, all fees, even if deferred, must be collected by DBI prior to issuance of the first certificate of occupancy. After a certificate of occupancy is issued, DBI has little, if any, contact with the project sponsor. Prior to its inclusion in Article 4 of the Planning Code, the TIDF was collected by the SFMTA upon the earlier of (1) the date when 50 percent of the net rentable area of the project had been occupied; or (2) issuance of the temporary certificate of occupancy (TCO) and as a condition precedent to issuance of a certificate of final completion and occupancy (CFC). During the transition period and in some earlier cases – in part because multiple agencies were involved in issuing permits and collecting fees – some projects owing TIDF were allowed to move forward without paying the fees due. This leaves a category of projects where TCO or CFC has been issued but the TIDF has not been paid.

The Department recommends establishing authority with the SFMTA to collect TIDF in those cases where the TCO or CFC has already been issued. Because DBI does not routinely have contact with project sponsors after these permits have been issued, DBI is not in a position to administer TIDF collection in these cases. The SFMTA can dedicate the resources necessary to ensure that all projects owing the TIDF pay the TIDF.

Related to this, the Department recommends establishing an appeal mechanism for the SFMTA so that in those cases where the SFMTA notifies a project sponsor of the TIDF due (applicable when a project’s building or site permit was issued prior to July 1, 2010), the project sponsor has the ability to pursue reconsideration of the amount due. A parallel appeal mechanism exists in Article 4 of the Planning Code and applies when the assessment and imposition of the fee is done by the Planning Department.

*Recommendation #5: Clarify the Accessory Use Provision to Exclude Residential*

As noted above, the proposed ordinance states that a use which is accessory to a use which is exempted from the TIDF is nonetheless levied the TIDF if the accessory use is not itself exempt. The proposed TIDF ordinance does not apply the TIDF to residential uses; however, the language on accessory uses may be read to apply to those uses which are accessory to residential. As this was not the intent of the proposed ordinance, the Department recommends clarifying the accessory use provision to clearly identify that uses accessory to residential are also exempted from the TIDF. It should be noted that the TIDF does apply to the portion of mixed use development that is non-residential, both currently and under the proposed ordinance.

**ENVIRONMENTAL REVIEW**

The proposal to amend Planning Code Article 4 by: 1) making technical corrections to specified definitions in Section 401 relating to the Transit Impact Development Fee (TIDF); and 2) amending Sections 408, 411.1 through 411.5, 411.7 and 411.8 to increase TIDF rates and clarify TIDF implementation and collection would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15273 of the CEQA Guidelines.

**PUBLIC COMMENT**

As of the date of this report, the Department has received one phone call comment in regard to the proposed Ordinance. The comment was against the proposal to charge independent schools the TIDF and in support of the remainder of the proposed ordinance. The Department also received one email in regard to the proposed Ordinance. The email asked the City to reconsider the proposal to apply the TIDF to uses defined as "Wholesale Storage of Materials and Equipment", questioning whether these had a significant impact on transit service demand and expressing that a new fee for such uses could be the determining factor in a project not being able to move forward.

In addition, the Department provided an informational presentation on the proposed TIDF ordinance to the Small Business Commission on June 11, 2012. The Small Business Commission passed a resolution which: 1) encouraged the Board of Supervisors to retain the current 3,000 square foot exemption threshold; 2) encouraged the Board of Supervisors to retain the current five-year inactivity timeframe; and 3) encouraged the Board of Supervisors to implement the Policy Credits program for non-formula retail small businesses occupying existing vacant space less than 5,000 square feet IF the Board of Supervisors chose NOT to retain the current 3,000 square foot exemption threshold. A copy of the Small Business Commission's resolution is attached.

<b>RECOMMENDATION:</b> Recommendation of Approval with Modification
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~~Attachments:~~ Not provided to the Board of Supervisors.  
~~Exhibit A:~~ ~~Draft Planning Commission Resolution~~ Provided only to Commission.