

LEGISLATIVE DIGEST

[Planning Code-Transit Impact Development Fee increase and updates]

Ordinance amending Article 4 of the Planning Code by: 1) revising and making technical corrections to specified definitions in Section 401 relating to the Transit Impact Development Fee (TIDF); 2) amending Sections 402, 408, 411 through 411.5, 411.7 and 411.8 and adding a new Section 411.9 to increase TIDF rates, revise exemptions and credits and clarify TIDF implementation and collection; and 3) making environmental findings, Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Existing Law

The Transit Impact Development Fee ("TIDF") is a development fee charged on most new commercial development in the City in excess of 3,000 square feet. The fee is intended to recover a portion of the costs to the Municipal Transportation Agency incurs in meeting public transit service demands created by new commercial development that is subject to the fee, including maintaining and expanding service capacity through the addition of service hours; purchase, maintenance and repair of rolling stock; installation of new lines and additions to existing lines. The fee is imposed based upon one of six economic activity categories applicable to the new development. The current TIDF rates for each of these categories except Production/Distribution/Repair (PDR) and Visitor Services is \$12.06 per square foot; for PDR and Visitor Services, the rate is \$9.65 per square foot. These rates, while adjusted for inflation, are based on a nexus study completed in 2001 and updated in 2004. Current law exempts projects by charitable entities (entities exempt from property taxation) from the fee.

In 2010, the TIDF was moved from the Administrative Code to the Planning Code as part of a consolidation of the procedures for administration and collection of the City's development impact fees. As a result, where a building or site permit was issued after July 1, 2010, responsibility for administration and collection of the fee was moved from the MTA to the Planning Department and the Department of Building Inspection (DBI).

Amendments to Current Law

The proposed ordinance makes adjustments to the TIDF rates based on a new nexus study on the TIDF completed in 2011, and effective February 1, 2013, lowers the threshold for triggering the TIDF from 3000 square feet of new development to 800 square feet. The legislation would, however, establish a new Policy Credit against the fee that would be available for small businesses and projects that provide less parking than the maximum authorized under the Planning Code. In addition, the legislation would revise or eliminate several existing exemptions from the fee. Finally, the legislation would clarify the process for

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collecting the fee for projects where a building or site permit was issued prior to July 1, 2010, but the fee remains unpaid. These revisions are explained in further detail below.

The TIDF rates would be adjusted based upon the updated nexus study, and these rates would be consistent with the rates contained in the proposed Transportation Sustainability Fee (TSF) legislation. The rate for the Cultural/Institution/Education (CIE), Medical and Health Services, and Retail/Entertainment economic activity categories would be increased to \$13.30 per square foot, except that the rate for museums, a subcategory of CIE, would be \$11.05 per square foot, a reduction from the current amount. The rate for the Management, Information and Professional Services (MIPS) and Visitor Services economic activity categories would be increased to \$12.64 per square foot, and the rate for the Production/Distribution/Repair (PDR) category would be reduced to \$6.80 per square foot.

The legislation would add a new Policy Credit that would be available to offset the fee in the case of (1) new development by small businesses (except formula retail) re-using existing vacant space as long as the gross square footage of the space is 5000 square feet or less; or (2) projects that provide less parking than the maximum authorized under the Planning Code. Policy Credits would be capped at no more than 3% of the anticipated TIDF revenue for the fiscal year.

The legislation also clarifies the application of several exemptions to the fee, including clarifying that the exemption for public facilities and utilities does not apply in the case of new development on private property that is leased to the City, and eliminating exemption for several uses that are captured under the PDR economic activity category. In addition, the legislation would eliminate existing exemptions from the fee for automotive services and wholesale storage of materials and equipment.

The proposed legislation also clarifies the process for imposition and collection of the TIDF in those cases where a building or site permit was issued prior to July 1, 2010, but the fee has not been imposed. In such cases, the SFMTA would continue to determine the amount of the fee due and notify the project sponsor of the fee amount due. In cases where a certificate of occupancy has not been issued, DBI would then assume responsibility for collecting the fee in accordance with the existing procedures in the Planning Code. In cases where a certificate of occupancy has been issued, the MTA would be responsible for collecting the fee in accordance with procedures set forth in the legislation. The procedures would largely parallel the existing procedures in the Planning Code, except that MTA would be responsible for reviewing objections to the determination of the fee, and any appeal would be to the MTA Board of Directors rather than to the Board of Appeals. In addition, a project sponsor seeking to appeal to the MTA Board would be required to pay the fee upon filing an appeal (with a refund, with interest, on any portion of the fee not upheld).

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The proposed legislation also makes several technical corrections and minor revisions to better integrate administration of the TIDF into the development fee administration process set forth in Article 4 of the Planning Code.

Background Information

The proposed legislation is intended to update TIDF rates based on the 2011 TIDF Update Report and address several administration and implementation issues that have arisen since the 2010 legislation that moved the TIDF from Chapter 38 of the Administrative Code to Article 4 of the Planning Code as part of a larger effort to centralize the administration of development impact fees.

These amendments to the substitute legislation introduced on September 4, 2012 make several technical corrections and clarifications, and would continue the current exemption for new development by charitable entities. In contrast, the substitute legislation would have eliminated that exemption as of December 31, 2013.