



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change HEARING DATE: DECEMBER 11, 2014

Project Name: **Revisions to Development Impact Fees, incorporating new Citywide Nexus Analysis**

Case Number: 2014.0966T

Initiated by: San Francisco Planning Department

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Reviewed by: **Adam Varat, Senior Planner**

Recommendation: **Adopt Amendments to the Planning Code**

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PLANNING CODE AMENDMENTS

The proposed ordinance includes proposed changes to various sections of Article IV of the Planning Code, which hosts all development impact fees, including downtown fees, area plan fees, and citywide fees. The Ordinance proposes to amend the Planning Code to adopt the San Francisco Citywide Nexus Analysis (Nexus Analysis) supporting existing development fees, including fees in the Downtown and other Area Plans, to cover impacts of residential and commercial development in four infrastructure areas: recreation and open space; pedestrian and streetscape improvements; childcare; and bicycle infrastructure. The Ordinance also proposes to make findings, including findings required by State law, related to all of the fees in Article IV generally and certain development fees supported by the Nexus Analysis specifically.

Currently, Article IV fees, especially in the Area Plans are supported by Area-specific analyses. The development of the Citywide Nexus analysis responds to two separate goals to: (1) provide a common analysis to support fees in any geographic area of the City where the City imposes them; and (2) update the support for various fees under certain program administration requirements detailed in Section 410 of the Planning Code. In addition, this legislation proposes minor amendments to the administration of various impact fee programs to facilitate their administration. This Ordinance **does not** propose changes to the rate of fees; expand the geographic scope of any fees; change the limitations on the geographic locations in which specific fees are expended; or modify the overall goals of the various impact fee programs. Following is a more detailed overview.

No change proposed:

Development Impact Fee Rates – No change

This Ordinance does not propose to increase the rate of existing development impact fees or create new development impact fees. Findings based on the new Citywide Nexus Study justify the imposition of various existing development impact fees at the existing established rates. The City will continue to index development impact fees annually to reflect cost inflation, according to the process described in Article IV of the Planning Code.

Effective January 1, 2015, most Development Impact Fees will increase by 5.00% in accordance with San Francisco Planning Code Article 4, Section 409(b).

Geographies Related to Area Plan Impact Fee Programs – No change

Although the nexus study was completed on a Citywide basis, this legislation does NOT change either (1) the geographic scope of any fees e.g. no fees will be charged in geogographic areas not currently subject to a fee; or (2) the existing limitations that fees collected from projects in certain Area Plans be spent within the geography of that Area Plan. For example development impact fees collected through the Eastern Neighborhoods Infrastructure Program must be expended within those specific plan areas within their current boundaries.

Proposed amendments:

Citywide Nexus Study – update findings for established impact fees

The California Mitigation Fee Act, California Government Code Section 66000 et seq. (the Fee Act) establishes requirements and principles for local jurisdictions to impose certain fees as a condition of development approval. One of the requirements is that the local jurisdiction establish a reasonable relationship or “nexus” between the impacts of new development and the proposed fee. While not all of the fees covered by Article IV are necessarily subject to the Fee Act, the City has concluded that, in most instances, establishing a nexus for any fee imposed by the City as a condition of development is prudent practice. Development impact fees are common among California cities and are one widely accepted way to fund a variety of infrastructure improvements. In addition, the City uses a variety of other funding sources to meet its infrastructure needs.

The majority of the “area plan impact fees”, including Rincon Hill (2005), Market and Octavia, Eastern Neighborhoods, Visitation Valley and Balboa Park were first established in 2008. For each area plan, the City conducted separate analyses and made separate findings to support the fees. Per Article IV of the Planning Code, the City updated the nexus analysis that supports the various fees.¹ In an effort to reduce the administrative burden for the various impact fee

¹ The City retained AECOM to conduct a San Francisco Infrastructure Level of Service Analysis, attached as Exhibit E; and, based on the results of that Analysis, to conduct a standards-based Nexus Analysis consistent with State law.

programs and to establish a consistent methodology, the City elected to complete a citywide nexus analysis that collated and built on various existing nexus studies. The Nexus Analysis developed a consistent standards-based methodology for most existing impact fees. This Citywide analysis will facilitate the City's future administration of impact fees, including completing the five year reporting and updates required by Planning Code Section 410.

The Citywide nexus analysis is intended to meet the requirements of the Mitigation Fee Act. It focuses on new growth's connection to open space, recreational facilities, complete streets including pedestrian and bicycle improvements, and childcare facilities. This analysis measures the need for community infrastructure generated by new growth per new resident or worker. The Citywide nexus analysis was completed at this time because the City Planning Code requires that all nexus studies be updated on a five year basis (Section 410) and because there is a State requirement to verify the nexus established for development impact fees. This study includes a Nexus Analysis to verify most impact fees in Article VI of the Planning Code except those pertaining to affordable housing, community stabilization and the Citywide Transportation Development Impact Fee. A transportation nexus analysis is currently underway.

The citywide nexus standard is generally based on the average demand for services based on the City's ability to commit to funding for the planning period; this standard may be higher than the existing level of service but may not fully account for the community infrastructure projects identified in advanced planning work. The results of the nexus analysis provides a ceiling or maximum fee supported by the analysis for each infrastructure type. Specific development impact fees recover no more than 95% of the total nexus amount, and in some cases recover less based on program specific policy priorities established through the community based planning processes.

The analysis confirms that, consistent with the findings in the ordinances, the existing and proposed impact fees are supported by a Mitigation Fee Act-type nexus analysis. **Accordingly the Ordinance proposes that the Board adopt the Citywide Nexus Analysis and make corresponding Findings for the various development impact fees.**

Remove Library from all Impact Fee Programs

The Ordinance also proposes to remove library materials and facilities from Area Plan impact fees. Currently each fee program is required to direct a small percentage (averaging approximately 1 or 2%) to the SF Public Library. However, at the end of this Fiscal Year the Branch Library Improvement Program (BLIP), will be fully funded. During the course of the Branch Library Improvement Program 16 existing libraries were renovated and 8 new libraries were constructed. The Library has a robust source of revenue for material acquisition. The Area Plan Impact Fees generate a very small amount of revenue for libraries, given the low level of program dollars currently allocated to library facilities. This results in a high rate of administrative costs for library development impact fees. Further, community members have consistently expressed an interest in prioritizing completion of important transportation and open space projects in concert with new development. The Planning Department in coordination with Library staff, the Eastern Neighborhoods and Market and Octavia CACs, and the IPIC have

concluded that area plan development impact fees should be prioritized for transit, complete streets, open space and recreation facilities, and childcare. **Accordingly the Ordinance includes amendments to remove Library expenditures from all area plan impact fees.**

All revenues that are currently directed towards the library facilities are proposed to be re-directed to Complete Streets expenditures in each plan area. *In most plan areas streetscape improvements have considerable funding gaps and are less competitive for other public funding sources. Staff presented the proposal to move the funds to streetscapes to the Eastern Neighborhoods and Market and Octavia CAC in the Spring of 2014, CAC members did not comment on this change. Public comments are discussed in more detail in a the Public Comments section.*

Create consistent expenditure categories across the various plan areas

Area Plan development impact fees are collected in one fund and expended across multiple expenditure categories based on the percentages identified in the Planning Code. The Planning Department's implementation team, in coordination with the IPIC, insures that each program achieves the legislated expenditure targets on a five year basis. So in a given year, while the City may allocate a disproportionate amount of the development impact fees in a Plan Area Fund to one expenditure category, over a five year period, the City will have allocated no more than the targeted percentage of impact fee revenue on a given expenditure category.

The Planning Department thinks that it will benefit the process **to use consistent language across the various area plan development impact fee programs**. Currently the Market and Octavia Plan Area details expenditures into 10 categories, while other plan areas describe the same range of potential types of expenditures using only 3 or 4 categories. The table below illustrates the relationship of expenditure categories across three plan areas. After several years of administering the Development Impact Fee program in coordination with the various CACs and the Interagency Plan Implementation Committee (IPIC), the Planning Department has determined that administration of the programs would benefit from a consistent description of the expenditure categories. This ordinance proposes a uniform set of 5 expenditure categories for all plan areas (see below). This re-organization of expenditure categories does not change which infrastructure projects are eligible for impact fee funding, however it offers the same language across the various programs. The Citywide Nexus Study is generally organized according to the proposed expenditure categories.

This system will help to insure that everyone involved in fee expenditures – including community members, planners, project managers, accountants, budget directors, plan managers, and advocates, in whichever agency or community group -- *will better understand what projects are eligible for impact fee funding for each expenditure category.* This increased clarity will facilitate the implementation of the infrastructure projects.

Current Market and Octavia	Current Eastern Neighborhoods	Current Balboa Park	Proposed Categories for ALL Plan Areas
Parks	Open space and recreational facilities	Parks, Plazas, Open Space	Recreation and Open Space
Park Improvements			
Transportation	Transit, streetscape and public realm improvements	Transit	Transit ²
Vehicle		Streets	Complete Streets: Pedestrian and Streetscape Improvements, Bicycle Infrastructure
Pedestrian			
Greening			
Bicycle			
Childcare	Community facilities (child care and library materials)	Community facilities and services/Other	Childcare
Library Materials			Library
Program Administration	<i>(derived as a percentage of total revenue)</i>	<i>(derived as a percentage of total revenue)</i>	Program Administration

The Nexus Study includes a description of projects eligible for each expenditure category. Note that the ordinance proposes some amendments to the description of “Program Administration” so that it applies consistently across all area plan impact fees. For all Area Plan development impact fees, no more than 5% of development impact fee revenue can be dedicated to Program Administration.

Note that with the exception of dedicating previous Library allocations towards Complete Streets, the percentage of revenue allocated to each category is not proposed to change for any of the Area Plan impact fees. For example the total percent of funds allocated to Complete Streets expenditures is currently 42.2% and will increase by roughly 2% to 44% of total residential development impact fee expenditures.

Currently some area plan development impact fees, do not include clearly delineated expenditure categories by percentage, including Rincon Hill, Visitation Valley, and the Market and Octavia Downtown Residential Special Use District FAR bonus program. In order to improve administration of the program, this ordinance proposes adding explicit funding percentages for each area plan impact fee.

² Note that Transit was not covered in the Citywide Nexus Analysis, but it is the subject of a separate study currently underway.

Process for Area Plan Development Impact Fee Fund Allocations and Expenditures

Since 2008, the Area Plan development impact fees have been administered consistently, in coordination with the CACs, Interagency Plan Implementation Committee (IPIC), Planning Commission (CPC), Board of Supervisors (BOS), and Mayor. First, the CACs and IPIC develop recommendations each year through the Fall, which are then presented to the CPC and BOS land use committee in early winter. At the start of the new year, various implementing agencies load the projects into their annual budget requests, consistent with the IPIC report. As with all capital expenditures, the Board's and Mayor's approval of the annual budget, constitutes final approval of allocation of the area plan development impact fees.

This ordinance proposes some amendments to some area plan development impact fee sections in the Planning Code, to more accurately describe the fund allocation process.

Monitoring Program

In order to create clarity and facilitate administration of the monitoring program, the description of monitoring requirements was removed from individual fee programs and moved to Section 409 of the Planning Code, which already addressed monitoring issues. Section 409 applies to all development impact fees included in Article VI of the Planning Code.

Changes introduced since the initiation hearing

- Some minor changes to the percentage allocations for some fees (Rincon Hill, Eastern Neighborhoods, and the Van Ness and Market Downtown Residential Special Use District) to be consistent with the nexus analysis, proposed expenditure plans, and priorities established in the area plans.
- Establishing a separate account for affordable housing dollars collected as part of the Eastern Neighborhoods Community Improvements Fee (Section 423).
- Text amendments clarifying that only MUR districts within Soma are subject to the provision that allocates a portion of the impact fees to Soma affordable housing projects, as originally intended. This text change clarifies for that for MUR districts outside of Soma, impacts fees are to be distributed like any other portion of Eastern Neighborhoods.
- Clarifying that payment of development impact fees must be at the same time, but in no event later than the issuance of the first construction document. Nearly every development impact fee in Article 4 of the Planning Code requires such fee be paid to the Department of Building Inspection "prior" to the issuance of the first construction document. While this language is generally understood by staff and project sponsors to be "immediately prior to," the language does not specifically stipulate how much prior to issuance such fees may be paid, which can cause undue confusion and technical difficulties if/when a project wants to pay development impact fees far in advance. This proposed amendment will necessitate two further steps:
 - (1) The Planning Commission directs staff, in consultation with the City Attorney's Office to add to the legislation amendments to all other sections of Article IV that relate to the

timing of fee payments to make the same language changes in those Sections.

Amendments should be made to all sections in Article IV relating to the timing of fee payments, including but not limited to: Sections: 411.3(b); 412.6; 413.7(c); 414.8(b); 416.3(d); 417.3(d); 418.3(g); 419.3(c); 420.3(d); 421.3(f); 422.3(e); 423.3(e); 424.6.2(e); 424.7.2(e); 425; 426; 427; 428; 429.3(d)(1); 429.3(d)(2)(B); 429.3(d)(2)(C); 430(d).

- (2) the Planning Code amendments will necessitate corresponding amendments to Building Code Section 107A.13. Staff will work with the Department of Building Inspection to move those corresponding amendments forward as soon as possible to avoid any inconsistency between the two Codes.

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 AND BASIS FOR RECOMMENDATION

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

- The legislation will improve the administration of the Planning Code.
- The legislation maintains and furthers the policy goals of several community planning efforts including Market and Octavia, Eastern Neighborhoods, Balboa Park, Visitacion Valley, and Rincon Hill.
- The Infrastructure and Nexus Study enable further capital planning and policy work around delivering infrastructure to meet existing and future community needs.

ENVIRONMENTAL REVIEW

The proposed Ordinance has been determined to be not defined as a project under CEQA Guidelines Sections 15738 and 15060(c)(2) because it does not result in a physical change in the environment.

PUBLIC COMMENT

The Planning Department has not received public comment on this legislation.

- Staff made presentations to both the Market and Octavia and Eastern Neighborhoods CAC in the Spring of 2014 summarizing this proposal.
- In October of 2014 – The Planning Commission held a hearing and initiated adoption hearings on this item.
- In November of 2014 – staff presented this legislation to the Eastern Neighborhoods CAC for discussion.

One member of the CAC asked several questions about this legislation at the November meeting and by e-mail. Many of the questions revolved around potentially expanding the program by raising the fee rates, expanding the geography subject to the fees, or adding new expenditure categories. Some community members suggested that transportation and affordable housing impact fee rates should be increased.

This legislation has two goals, one to update the Nexus analysis as required by State and local law and second to make minor modifications to the legislation around the administration of the program. Any changes to the scope or scale of the program would require at a minimum additional community planning and an updated feasibility analysis. Adoption of this ordinance does not preclude further community planning or policy work around expanding the existing fee program. The Planning Department in coordination with SFMTA is working on a few initiatives around infrastructure planning that may result in expansions to the development impact fee program, including the Transportation Sustainability Program, the Central SOMA plan, and the Mayor's Housing Working group which is considering updates to the affordable housing program. These projects will be vetted with the community and brought to you in at a future hearing.

RECOMMENDATION: Recommendation of Approval with modifications

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Proposed Ordinance - *revised from initiation*