

**REVISED LEGISLATIVE DIGEST**

(12/1/2015, Amended in Board)

[Planning Code - Establishing a New Citywide Transportation Sustainability Fee]

**Ordinance amending the Planning Code by establishing a new citywide Transportation Sustainability Fee and suspending application of the existing Transit Impact Development Fee, with some exceptions, as long as the Transportation Sustainability Fee remains operative; applying the Transportation Sustainability Fee to Hospitals and Medical Health Services; amending Section 401 to add definitions reflecting these changes; amending Section 406 to clarify affordable housing and homeless shelter exemptions from the Transportation Sustainability Fee; making conforming amendments to the Area Plan fees in Planning Code, Article 4; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings, including general findings, findings of public necessity, convenience and welfare, and findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

Existing Law

The City imposes several development fees on new development to alleviate the impacts that such development imposes on City services and infrastructure. Some of these fees have Citywide application, such as the Transit Impact Development Fee, or TIDF (codified in Section 411 of the Planning Code), or the Inclusionary Housing Program (codified in Section 415.) Others apply to specific areas of the City, such as the Market and Octavia Community Improvements Fund, the Balboa Park Community Improvements Fund, or the Eastern Neighborhoods Impact Fees and Public Benefit Fund (located at Sections 421, 422 and 423, respectively.)

Amendments to Current Law

This Ordinance would create a new Citywide transportation impact fee, the Transportation Sustainability Fee, or TSF. The TSF would replace the TIDF, with some exceptions. While the TIDF applies to commercial development, the TSF would apply to both residential and non-residential developments in the City.

The Ordinance contains extensive findings setting forth the need and justification for the TSF. The findings explain that the City prepared a study (the TSF Nexus Study) to ensure the imposition of the TSF complies with the Mitigation Fee Act, California Government Code Section 66001 et seq.

The Ordinance establishes the applicability of the TSF as follows:

- The TSF applies to any development project in the City which results in:
  - more than twenty new dwelling units; or
  - new group housing facilities, or additions of 800 gross square feet or more to an existing group housing facility; or
  - new construction of a non-residential use in excess of 800 gross square feet, or additions of 800 square feet or more to an existing non-residential use; or
  - new construction of a production, distribution and repair (PDR) use in excess of 1,500 gross square feet, or additions of 800 square feet or more to an existing PDR use; or
  - change or replacement of use of a lower fee category to a higher fee category, regardless of whether the existing use previously paid the TSF or TIDF; or
  - change or replacement of use from a Hospital or a Health Service to any other use.
  
- Some projects are exempt from the Ordinance, such as City projects, state or federal projects, affordable housing projects, small businesses, and certain nonprofit projects. In this last category, the Ordinance specifies that Hospitals and Medical Services that require an Institutional Master Plan shall not be exempt. Post-Secondary Educational Institutions, which were proposed to pay the fee in the Ordinance as introduced, now are proposed to be exempt.
  
- The Ordinance suspends the application of the TIDF for as long as the TSF remains operative, with some exceptions, and provides that if by any reasons the TSF is determined to be invalid, in whole or in part, the TIDF shall no longer be suspended and shall become immediately operative.
  
- The Ordinance provides for the grandfathering of some projects currently in the development pipeline. More specifically, it requires that:
  - projects that have a development application approved before the effective date of the Ordinance shall not pay the TSF, but shall be subject to the TIDF and any other applicable fees;
  - projects that have filed a development application or an environmental review application on or before July 21, 2015, but have not received approval of any such application, shall pay the TSF as follows: residential uses shall pay 50% of the applicable residential TSF rate; and non-residential and PDR uses shall pay the applicable TIDF rate – as well as any other applicable fees.
  - projects that have filed their first application, whether a development application or an environmental review application, after July 22, 2015, and have not received approval of any such application, shall pay the TSF as follows: residential, non-residential and PDR uses shall pay 100% of the applicable TSF rate – as well as any other applicable fees.

The Ordinance establishes the TSF Schedule, stating how much money the different land use categories must pay, as follows:

- Residential Uses, 21-99 units: \$7.74 per gross square foot (gsf) of development;
- Residential Uses, all units above 99 units : \$8.74 per gsf;
- Non-Residential Uses (except for Hospitals and Medical Services), 800-99,999 gsf: \$18.04 per gsf;
- Non-Residential Uses (except for Hospitals and Medical Services), all gsf above 99,999 gsf: \$19.04 per gsf;
- Hospitals, following a special calculation method for hospitals, \$18.74;
- Medical Services, all gsf above 12,000 gsf: \$11.00 per gsf;
- PDR Uses: \$7.61 per gsf.

The Ordinance provides for a method to calculate the fees for Residential Uses and Hospitals. Hospitals do not pay the fee on total gross square footage of new development, but on a special calculation specified in the Ordinance.

These rates are to be adjusted on an annual basis every January 1, based on the Annual Infrastructure Construction Cost Inflation Estimate, as described in Section 409(b).

The Ordinance also sets forth an Expenditure Plan, with five broad expense categories of projects among which the TSF funds must be allocated, while giving priority to specific projects identified in the different Area Plans. These categories are Transit Capital Maintenance; Transit Service Expansion and Reliability Improvements (both for San Francisco and Regional Providers); Complete Streets (Bicycle and Pedestrian) Improvements; and Program Administration. The Ordinance specifies what percentage of the TSF funds must go to each category.

The Ordinance mandates that every three years, or sooner if requested by the Mayor, the Board of Supervisors, or the Planning Commission, the SFMTA shall update the TSF Economic Feasibility Study that was prepared as part of the TSF effort.

The Ordinance also mandates that, when preparing the 5-year report required under the Section 410, of the Planning Code, the Planning Director and the Controller take into account, to the extent possible, the feasibility of development fees in the different areas of the City.

The Ordinance makes clean-up and conforming amendments to several sections of the Municipal Codes, including changes to some of the Area Plans sections.

Background Information

This Ordinance is the culmination of several years of study and outreach undertaken by City agencies, together with the County Transportation Authority. As part of that effort, and to comply with the requirements of the Mitigation Fee Act, the City prepared the TSF Nexus Study. The City also prepared a TSF Economic Feasibility Study. Both these documents support the TSF. They are incorporated by reference in the Ordinance, and can be found in the Board of Supervisors File for the Ordinance.

This Ordinance was introduced on July 21, 2015, and approved at first reading on November 3, 2015. At the November 3, 2015 Board hearing, the Board of Supervisors voted to duplicate the ordinance and send the duplicate ordinance back to Land Use Committee, for consideration of the amendments related to Hospitals, Medical Services, and the grand-fathering provisions that apply to Non-residential and PDR uses. This Legislative Digest reflects the amendments made to the duplicate file at the Land Use Committee meeting on November 23, 2015.

n:\legana\as2015\1500870\01064011.docx