

1 [Conduct a Nexus Study On Imposition of the Park Fee on Uses Other Than Office On
2 Geographic Areas of the City Other than C-3 Use Districts.]

3 **Ordinance amending Planning Code Section 139 to provide that \$100,000 of Downtown**
4 **Special Park Fund monies shall be used to fund a nexus study, under the direction of**
5 **the General Manager of the Recreation and Park Department, to examine whether the**
6 **Downtown Park Fee should be imposed on uses other than office and on geographic**
7 **areas of the City other than C-3 use districts and making findings of consistency with**
8 **the priority policies of Planning Code Section 101.1 and the General Plan.**

9 Note: Additions are *single-underline italics Times New Roman*;
10 deletions are ~~*strikethrough italics Times New Roman*~~.
11 Board amendment additions are double underlined.
12 Board amendment deletions are ~~strikethrough normal~~.

13 Be it ordained by the People of the City and County of San Francisco:

14 Section 1. General Plan and Priority Policy Findings

15 (1) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this
16 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
17 Planning Commission Resolution No. _____ recommending approval of this Planning
18 Code Amendment, and incorporates such reasons by this reference thereto. A copy of said
19 resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

20 (2) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this
21 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and
22 with the General Plan and hereby adopts the findings of the Planning Commission, as set
23 forth in Planning Commission Resolution No. _____, and incorporates said findings by this
24 reference thereto.

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1 Section 2. Findings Office and retail development in C-3 use districts attracts new
2 workers to the City, who reside throughout the City and who create an increased need for
3 parks in areas other than C-3 use districts. Therefore it is reasonable to use \$100,000 of fund
4 monies to fund a nexus study to examine whether the Downtown Park Fee should be imposed
5 on uses other than office and retail and on areas of the City other than C-3 use districts.

6 Section 3. The San Francisco Planning Code is hereby amended by amending Section
7 139, to read as follows:

8 Sec. 139 **DOWNTOWN PARK SPECIAL FUND**

9 (a) Findings and Purposes. Existing public park facilities located in the downtown
10 office districts are at or approaching capacity utilization by the daytime population in those
11 districts. The need for additional public park and recreation facilities in the downtown districts
12 will increase as the daytime population increases as a result of continued office development
13 in those areas. While the open space requirements imposed on individual office and retail
14 developments address the need for plazas and other local outdoor sitting areas to serve
15 employees and visitors in the districts, such open space cannot provide the same recreational
16 opportunities as a public park. In order to provide the City and County of San Francisco with
17 the financial resources to acquire and develop public park and recreation facilities which will
18 be necessary to serve the burgeoning daytime population in these districts, a Downtown Park
19 Fund shall be established as set forth herein.

20 (b) Definitions. For purposes of this Section 139, the following definitions shall
21 apply:

22 (1) "First certificate of occupancy" shall mean either a temporary certificate of
23 occupancy or a Certificate of Final Completion and Occupancy as defined in San Francisco
24 Building Code Section 307, whichever is issued first.

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1 (2) “Net addition of gross floor area of office use” shall mean gross floor area as
2 defined in Planning Code Section 102.9, to be occupied by, or primarily serving, office use,
3 less the gross floor area in any structure demolished or rehabilitated as part of the proposed
4 office development project which gross floor area was used primarily and continuously for
5 office use and was not accessory to any use other than office use for at least five years prior
6 to the City Planning Department approval of the office development project subject to this
7 Section, or for the life of the structure demolished or rehabilitated, whichever is shorter.

8 (3) “Office development project” shall mean any new construction, addition,
9 extension, conversion or enlargement, or combination thereof, of an existing structure which
10 includes any gross floor area of office use; provided, however, that this term shall not include
11 an addition to an existing structure which would add gross floor area in an amount less than
12 20 percent of the gross floor area of the existing structure.

13 (4) “Office use” shall mean any structure or portion thereof intended for occupancy
14 by business entities which will primarily provide clerical, professional or business services of
15 the business entity, or which will provide clerical, professional, or business services to other
16 business entities or to the public at that location including, but not limited to, the following
17 services: banking, law, accounting, insurance, management, consulting, technical, and the
18 office functions of manufacturing and warehousing businesses, and excluding design
19 showcases. Such definition shall include all uses encompassed within the meaning of
20 Planning Code Section 219; provided, however, that the term “office use” shall not include any
21 such use which qualifies as an accessory use, as defined and regulated in Sections 204
22 through 204.5 of this Code.

23 (5) “Retail use” shall mean space within any structure or portion thereof intended or
24 primarily suit- able for occupancy by persons or entities which supply commodities to
25 customers on the premises including, but not limited to, stores, shops, restaurants, bars,

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1 eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220
2 through 225, and also including all space accessory to such retail use.

3 (6) "Sponsor" shall mean an applicant seeking approval for construction of an office
4 development project subject to this Section, the applicants' successors and assigns, and any
5 entity which controls or is under common control with the applicant.

6 (c) Requirements. These requirements are in addition to any applicable
7 requirements set forth in Section 138. The sponsor of a proposed office development project
8 within the C-3-O, C-3-O (SD), C-3-R, C-3-G or C-3-S Use Districts shall, prior to issuance of
9 the certificate of occupancy for the project, pay a fee to the Treasurer of the City and County
10 of San Francisco to be deposited in the Downtown Park Fund, in accordance with the
11 standards set forth in this Section. The certificate of occupancy for the project shall not be
12 issued without proof of payment of the fee issued by the Treasurer.

13 (d) Imposition of the Downtown Park Fee. The amount of the fee shall be \$2 per
14 square foot of the net addition of gross floor area of office use to be constructed as set forth in
15 the final approved building or site permit. The amount of the fee shall be reviewed every third
16 year, beginning three years after the effective date of this ordinance, by a joint session of the
17 Recreation and Park Commission and the City Planning Commission. The Commissions shall
18 jointly review the fee to determine whether inflation in land and development costs justifies an
19 increase in the fee, and if they so find, shall recommend an amendment of the fee provisions
20 of this ordinance to the Board of Supervisors.

21 (e) Determination of Amount.

22 (1) Prior to approval by either the Planning Department or the Planning Commission
23 of a building or site permit for a development project subject to this section, the Department
24 shall issue a notice complying with Planning Code Section 306.3 setting forth its initial
25 determination of the net addition of gross floor area of office use subject to this section.

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1 (2) Any person may appeal the initial determination by delivering an appeal in
2 writing to the Planning Department within 15 days of the notice. If the initial determination is
3 not appealed within the time allotted, the initial determination shall become a final
4 determination. If the initial determination is appealed, the Planning Commission shall
5 schedule a public hearing prior to the approval of the development project by the Department
6 or the Commission to determine the net addition of gross floor area of office use subject to
7 this ordinance. The public hearing may be scheduled separately or simultaneously with a
8 hearing under Planning Code Sections 306.2, 309(h),313.4, 314.5, 315.3 or a Discretionary
9 Review hearing under San Francisco Municipal Code Part III, Section 26. The Commission
10 shall make a final determination of the net addition of gross floor area of office use subject to
11 this section at the hearing.

12 (3) The Planning Department or the Planning Commission shall set forth the final
13 determination of the net addition of gross floor area of office use subject to this section in the
14 conditions of approval of any building or site permit application. The Planning Department
15 shall notify the Treasurer of the final determination of the net addition of gross floor area of
16 office use subject to this section within 30 days following the date of the final determination.
17 The Planning Department shall also notify the Department of Building Inspection ("DBI") and
18 the Mayor's Office of Housing that a development project is subject to this section at the time
19 the Planning Department or the Planning Commission approves the building or site permit for
20 the development project.

21 (4) In the event that the Planning Department or the Planning Commission takes
22 action affecting any development project subject to this section and such action is thereafter
23 modified, superseded, vacated, or reversed by the Board of Appeals, the Board of
24 Supervisors, or by court action, the permit application for such development project shall be
25 remanded to the Department or the Commission to determine whether the proposed project

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1 has been changed in a manner which affects the calculation of the amount of housing
2 required under this ordinance and, if so, the Department or the Commission shall revise the
3 requirement imposed on the permit application in compliance with this section within 60 days
4 following such remand and notify the sponsor in writing of such revision or that a revision is
5 not required. If the net addition of gross floor area of office use subject to this section is
6 revised, the Commission shall promptly notify the Treasurer of the revision.

7 (f) Procedure Regarding Temporary Permit of Occupancy. The Planning
8 Department shall impose a condition requiring payment of the Downtown Park fee on
9 approval of any office development project subject to this Section, requiring that such fee be
10 paid prior to the issuance of the first certificate of occupancy for the office development
11 project. Upon the sponsor's payment of the fee in full to the Treasurer and upon the sponsor's
12 request, the Treasurer shall issue a certification that the fee has been paid. The sponsor shall
13 present such certification to DBI and the Planning Department prior to the issuance by DBI of
14 the first certificate of occupancy for the development project. At the time the Planning
15 Department or Planning Commission approves an application for a site or building permit to
16 construct an office development project subject to this Section, the Planning Department shall
17 notify in writing DBI and the Treasurer, identifying the office development project. DBI shall
18 not issue the certificate of occupancy without proof of payment of the fee from the Treasurer.
19 Any failure of the Treasurer, DBI, or the Planning Department to give any notice under this
20 Section shall not relieve a sponsor from compliance with this Section. The procedure set forth
21 in this Subsection is not intended to preclude enforcement of the provisions of this section
22 pursuant to any other section of this Code, or other authority under the laws of the State of
23 California.

24 (g) Downtown Park Fund. There is hereby established a separate fund set aside for
25 a special purpose entitled the Downtown Park Fund ("Fund"). All monies collected by the

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1 Treasurer pursuant to this Section shall be deposited in the Fund. All monies deposited in the
2 Fund shall be used solely to acquire and develop public recreation and park facilities for use
3 by the daytime population of the C-3 Use Districts, except that monies from the fund shall be
4 used by the Recreation and Park Commission and the Planning Commission to fund in a
5 timely manner a nexus study to demonstrate the relationship between office development
6 projects and open space as set forth in subsection (a) of this Section and except that \$100,000
7 of the monies from the fund shall be used to fund a nexus study, under the direction of the General
8 Manager of the Recreation and Park Department, to examine whether the Downtown Park Fee should
9 be imposed on uses other than office and on geographic areas of the City other than C-3 use districts.

10 The Controller's Office shall file an annual report with the Board of Supervisors, beginning one
11 year after the effective date of this ordinance, which report shall set forth the amount of money
12 collected in the Fund. The Fund shall be administered jointly by the Recreation and Park
13 Commission and the City Planning Commission. The two Commissions shall conduct
14 business related to their duties under this Section at joint public hearings, which hearings may
15 be initiated by either the Recreation and Park Commission or the City Planning Commission.
16 A joint public hearing shall be held by the Commissions to elicit public comment on proposals
17 for the acquisition of property using monies in the Fund. Notice of any joint public hearings
18 shall be published in an official newspaper at least 20 days prior to the date of the hearing,
19 which notice shall set forth the time, place, and purpose of the hearing. The hearing may be
20 continued to a later date by a majority vote of the members of both Commissions present at
21 the hearing. At a joint public hearing, a quorum of the membership of both Commissions may
22 vote to allocate the monies in the Fund for acquisition of property for park use and/or for
23 development of property for park use. The Recreation and Park Commission shall alone
24 administer the development of the recreational and park facilities on any acquired property
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1 designated for park use by the Board of Supervisors, using such monies as have been
2 allocated for that purpose at a joint hearing of both Commissions.

3 (h) Collection of Fee; Interest; Lien.

4 (1) The Downtown Park Fee is due and payable to the Treasurer prior to issuance
5 of the first certificate of occupancy in accordance with paragraph (e) of this Section. If, for any
6 reason, the fee remains unpaid following issuance of the certificate, any amount due shall
7 accrue interest at the rate of one and one-half percent per month, or fraction thereof, from the
8 date of issuance of the certificate until the date of final payment.

9 (2) If, for any reason, the fee imposed by this section remains unpaid following
10 issuance of the certificate of occupancy, the Treasurer shall initiate proceedings in
11 accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make
12 the entire unpaid balance of the Downtown Park Fee, including interest, a lien against all
13 parcels used for the development project. The Treasurer shall send all notices required by
14 that Article to the owner of the property as well as the sponsor. The Treasurer shall also
15 prepare a preliminary report notifying the sponsor of a hearing to confirm such report by the
16 Board of Supervisors at least 10 days before the date of the hearing. The report to the
17 sponsor shall contain the sponsor's name, a description of the sponsor's development project,
18 a description of the parcels of real property to be encumbered as set forth in the Assessor's
19 Map Books for the current year, a description of the alleged violation of this Section, and shall
20 fix a time, date, and place for hearing. The Treasurer shall cause this report to be mailed to
21 the sponsor and each owner of record of the parcels of real property subject to lien. Except
22 for the release of the lien recording fee authorized by Administrative Code Section 10.237, all
23 sums collected by the Tax Collector under this Section shall be held in trust by the Treasurer
24 and deposited in the Downtown Park Fund established under subsection (f).

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1 (3) Any notice required to be given to a sponsor or owner shall be sufficiently given
2 or served upon the sponsor or owner for all purposes in this Section if personally served upon
3 the sponsor or owner or if deposited, postage prepaid, in a post office letterbox addressed in
4 the name of the sponsor or owner at the official address of the sponsor or owner maintained
5 by the Tax Collector for the mailing of tax bills or, if no such address is available, to the
6 sponsor at the address of the development project, and to the applicant for the site or building
7 permit at the address on the permit application.

8 (i) One-Time Fee Payment. In the event that a development project for which the
9 fee imposed by this Section has been fully paid is demolished or converted to a use or uses
10 not subject to this Section prior to the expiration of its estimated useful life, the City shall
11 refund to the sponsor a portion of the amount of the fee paid. The portion of the fee refunded
12 shall be determined on a pro rata basis according to the ratio of the remaining useful life of the
13 project at the time of demolition or conversion in relation to its total useful life. For purposes
14 of this ordinance, the useful life of a development project shall be 50 years.

15 Section 2 The Planning Department has determined that the actions contemplated in
16 this Ordinance are in compliance with the California Environmental Quality Act (California
17 Public Resources Code sections 21000 et seq.) Said determination is on on file with the Clerk
18 of the Board of Supervisors in File No. _____ and is incorporated herein by reference.

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21 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

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23 By: _____
Sarah Ellen Owsowitz
24 Deputy City Attorney

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