

Amendment of the Whole  
As divided in Committee  
December 15, 2004.

FILE NO. 040731

ORDINANCE NO.

1 [Conduct a nexus study on the imposition of the Park Fee on uses other than office on  
2 geographic areas of the 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, prohibiting use of Downtown Park Fee**  
8 **monies on improvements for Ferry Park until that nexus study is completed unless use**  
9 **of such monies is approved by a financial committee of the Board of Supervisors, and**  
10 **making findings of consistency with the priority policies of Planning Code Section**  
11 **101.1 and the General Plan.**

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

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

16 Section 1. General Plan and Priority Policy Findings

17 (1) Pursuant to Planning Code Section 302, this Board of Supervisors finds that this  
18 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in  
19 Planning Commission Resolution No. 16855 recommending approval of this Planning Code  
20 Amendment, and incorporates such reasons by this reference thereto. A copy of said  
21 resolution is on file with the Clerk of the Board of Supervisors in File No. 040731.

22 (2) Pursuant to Planning Code Section 101.1, this Board of Supervisors finds that this  
23 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and  
24 with the General Plan and hereby adopts the findings of the Planning Commission, as set  
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1 forth in Planning Commission Resolution No. 16855, and incorporates said findings by this  
2 reference thereto.

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

8 Section 3. The San Francisco Planning Code is hereby amended by amending Section  
9 139, to read as follows:

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

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

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

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

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

12 (3) "Office development project" shall mean any new construction, addition,  
13 extension, conversion or enlargement, or combination thereof, of an existing structure which  
14 includes any gross floor area of office use; provided, however, that this term shall not include  
15 an addition to an existing structure which would add gross floor area in an amount less than  
16 20 percent of the gross floor area of the existing structure.

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

3 (5) "Retail use" shall mean space within any structure or portion thereof intended or  
4 primarily suitable for occupancy by persons or entities which supply commodities to  
5 customers on the premises including, but not limited to, stores, shops, restaurants, bars,  
6 eating and drinking businesses, and the uses defined in Planning Code Sections 218 and 220  
7 through 225, and also including all space accessory to such retail use.

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

11 (c) Requirements. These requirements are in addition to any applicable  
12 requirements set forth in Section 138. The sponsor of a proposed office development project  
13 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  
14 the certificate of occupancy for the project, pay a fee to the Treasurer of the City and County  
15 of San Francisco to be deposited in the Downtown Park Fund, in accordance with the  
16 standards set forth in this Section. The certificate of occupancy for the project shall not be  
17 issued without proof of payment of the fee issued by the Treasurer.

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

2 (e) Determination of Amount.

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

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

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

3 (4) In the event that the Planning Department or the Planning Commission takes  
4 action affecting any development project subject to this section and such action is thereafter  
5 modified, superseded, vacated, or reversed by the Board of Appeals, the Board of  
6 Supervisors, or by court action, the permit application for such development project shall be  
7 remanded to the Department or the Commission to determine whether the proposed project  
8 has been changed in a manner which affects the calculation of the amount of housing  
9 required under this ordinance and, if so, the Department or the Commission shall revise the  
10 requirement imposed on the permit application in compliance with this section within 60 days  
11 following such remand and notify the sponsor in writing of such revision or that a revision is  
12 not required. If the net addition of gross floor area of office use subject to this section is  
13 revised, the Commission shall promptly notify the Treasurer of the revision.

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

7 (g) Downtown Park Fund. There is hereby established a separate fund set aside for  
8 a special purpose entitled the Downtown Park Fund ("Fund"). All monies collected by the  
9 Treasurer pursuant to this Section shall be deposited in the Fund. All monies deposited in the  
10 Fund shall be used solely to acquire and develop public recreation and park facilities for use  
11 by the daytime population of the C-3 Use Districts, except that monies from the fund shall be  
12 used by the Recreation and Park Commission and the Planning Commission to fund in a  
13 timely manner a nexus study to demonstrate the relationship between office development  
14 projects and open space as set forth in subsection (a) of this Section *and except that \$100,000*  
15 *of the monies from the fund shall be used to fund a nexus study, under the direction of the General*  
16 *Manager of the Recreation and Park Department, to examine whether the Downtown Park Fee should*  
17 *be imposed on uses other than office and on geographic areas of the City other than C-3 use districts.*  
18 No Downtown Park Fee monies shall be expended on improvements for Ferry Park (generally  
19 Assessor's Block 202, Lots 6, 14 and 15, and Assesor's Block 203, Lot 14) until such time as  
20 this nexus study is completed unless use of such Downtown Park Fee monies is approved by  
21 a financial committee of the Board of Supervisors. The Controller's Office shall file an annual  
22 report with the Board of Supervisors, beginning one year after the effective date of this  
23 ordinance, which report shall set forth the amount of money collected in the Fund. The Fund  
24 shall be administered jointly by the Recreation and Park Commission and the City Planning  
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1 Commission. The two Commissions shall conduct business related to their duties under this  
2 Section at joint public hearings, which hearings may be initiated by either the Recreation and  
3 Park Commission or the City Planning Commission. A joint public hearing shall be held by the  
4 Commissions to elicit public comment on proposals for the acquisition of property using  
5 monies in the Fund. Notice of any joint public hearings shall be published in an official  
6 newspaper at least 20 days prior to the date of the hearing, which notice shall set forth the  
7 time, place, and purpose of the hearing. The hearing may be continued to a later date by a  
8 majority vote of the members of both Commissions present at the hearing. At a joint public  
9 hearing, a quorum of the membership of both Commissions may vote to allocate the monies  
10 in the Fund for acquisition of property for park use and/or for development of property for park  
11 use. The Recreation and Park Commission shall alone administer the development of the  
12 recreational and park facilities on any acquired property designated for park use by the Board  
13 of Supervisors, using such monies as have been allocated for that purpose at a joint hearing  
14 of both Commissions.

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

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

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

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

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

3 Section 2 The Planning Department has determined that the actions contemplated in  
4 this Ordinance are in compliance with the California Environmental Quality Act (California  
5 Public Resources Code sections 21000 et seq.) Said determination is on on file with the Clerk  
6 of the Board of Supervisors in File No. 040731 and is incorporated herein by reference.

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

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11 By: \_\_\_\_\_  
Sarah Ellen Owsowitz  
12 Deputy City Attorney

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