

1 [Imposing development impact fees for the provision of necessary community infrastructure in
2 DTR Districts]

3 **Ordinance amending the Planning Code by adding Section 318 to impose community**
4 **improvement impact fees on residential development in the DTR districts to provide**
5 **necessary community improvements and enhance property values in the district by**
6 **helping to fund the construction and reconstruction of streets, streetscaping, parks,**
7 **community centers, and other public infrastructure.**

8 Note: This section is entirely new

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

10 Section 1. The San Francisco Planning Code is hereby amended by adding Section
11 318, to read as follows:

12 **SEC. 318. COMMUNITY IMPROVEMENTS FUND IN DTR DISTRICTS.**

13 Sections 318.1—318.5 set forth the requirements and procedures for the Downtown
14 Residential Community Improvements Fund.

15 **SEC. 318.1. PURPOSE AND INTENT.**

16 The population of California has grown by more than 11 percent since 1990 and is
17 expected to continue increasing. The San Francisco Bay Area is growing at a rate similar to
18 the rest of the State. New residential construction in San Francisco is necessary to
19 accommodate the additional population. At the same time, new residential construction
20 should not diminish the City’s open space or increase dependence on the private automobile
21 for commuting.

22 San Francisco already is experiencing a severe shortage of housing available to
23 people at all income levels, resulting in a sharp increase in home prices. The Association of
24 Bay Area Governments’ Regional Housing Needs Determination (RHND) forecasts that
25

1 20,372 new residential units need to be built in San Francisco by 2006, and at least 5,639 of
2 these units should be available to moderate income households.

3 The City should encourage new housing production in a manner that enhances existing
4 neighborhoods and creates new residential and mixed-use neighborhoods. One solution to
5 the housing crisis is to encourage the construction of higher density housing in areas of the
6 City best able to accommodate such housing because of easy access to public transit and the
7 availability of larger development sites.

8 Many elements constrain housing production in the City, making it a challenge to build
9 housing that is affordable to those at moderate income levels. San Francisco is largely built
10 out, and its geographical location at the northern end of a peninsula inherently prevents
11 substantial new development. There is no available adjacent land to be annexed, as the cities
12 located on San Francisco's southern border are also dense urban areas. Thus, new
13 construction of housing is limited to areas of the City not previously designated as residential
14 areas, infill sites, or areas with increased density. New market-rate housing absorbs a
15 significant amount of the remaining supply of land and other resources available for
16 development and thus limits the supply of affordable housing.

17 Emerging downtown residential areas of the City contain many older commercial,
18 institutional and industrial uses. Due to the underutilization of land in these areas and their
19 proximity to downtown employment and city and regional transport, they present an
20 opportunity to build a quantity of new housing at increased densities within easy walking
21 distance of the downtown and city and regional transit centers in a way that can contribute to
22 a vibrant downtown community over the next several years. The Planning Department is
23 currently rezoning these areas to a "Downtown Residential" (DTR) zoning that will enable
24 significant new high-density residential development. These areas are lacking, however, in
25 even basic infrastructure and amenities necessary to serve a residential population, and the

1 need for these improvements will increase as the downtown's residential population,
2 especially families and children, grow with the transformation of these areas into dense
3 mixed-use residential districts. While the open space requirements imposed on individual
4 developments address minimum needs for private open space and access to light and air,
5 such open space cannot provide the same social and recreational opportunities as safe and
6 attractive public sidewalks, parks and other community services, nor does it contribute to the
7 overall transformation of the district into a safe and attractive residential area.

8 In order to enable the City and County of San Francisco to create a coherent,
9 attractive, and safe residential neighborhood in these emerging downtown residential areas,
10 and to increase property values and investment in the district, it is necessary to upgrade
11 existing streets and streetscaping, and to acquire and develop neighborhood parks, recreation
12 facilities and other community services to serve the new residential population. To fund such
13 community infrastructure and amenities, new residential development in the district shall be
14 assessed development impact fees proportionate to the increased demand for such
15 infrastructure and amenities created by the new housing. The City will use the proceeds of
16 the fee to build new infrastructure and enhance existing infrastructure in the district or within
17 250 feet of the district that provides direct benefits to the new housing. The net increase in
18 individual property values in these areas due to the enhanced neighborhood amenities
19 financed with the proceeds of the fee are expected to exceed the payments of fees by the
20 sponsors of residential development. A Community Improvements Impact Fee shall be
21 established for DTR districts as set forth herein.

22 **SEC. 318.2. DEFINITIONS.**

23 The following definitions shall govern this ordinance:

- 24 (a) "Child-care facility" shall mean a child day-care facility as defined in California
25 Health and Safety Code Section 1596.750.

- 1 (b) "DBI" shall mean the Department of Building Inspection.
- 2 (c) "DPW" shall mean the Department of Public Works.
- 3 (d) "First certificate of occupancy" shall mean either a temporary certificate of
4 occupancy or a Certificate of Final Completion and Occupancy, as defined in
5 San Francisco Building Code Section 109, whichever is issued first.
- 6 (e) "Infrastructure" shall mean street paving, crosswalks, signs, medians, bulbouts,
7 sidewalks, trees, parks and open space, day care centers, libraries, and
8 community centers.
- 9 (f) "Infrastructure fee" shall mean a monetary contribution based upon the cost to
10 provide infrastructure under this program.
- 11 (g) "MOH" shall mean the Mayor's Office of Housing.
- 12 (h) "Net addition of occupiable square feet of residential use" shall mean occupied
13 floor area, as defined in Section 102.10 of this Code, including bathrooms
14 provided as part of dwelling units, to be occupied by or primarily serving,
15 residential use, less the occupied floor area in any structure demolished or
16 rehabilitated as part of the proposed residential development project which
17 occupied floor area was used primarily and continuously for residential use and
18 was not accessory to any use other than residential use for at least five years
19 prior to Planning Department approval of the residential development project
20 subject to this Section, or for the life of the structure demolished or rehabilitated,
21 whichever is shorter.
- 22 (i) "Program" shall mean the Downtown Residential Community Improvements
23 Neighborhood Program.
- 24 (j) "Program Area" shall mean those districts identified as Downtown Residential
25 (DTR) Districts in the Planning Code and on the Zoning Maps.

- 1 (k) "Residential development project" shall mean any new construction, addition,
2 extension, conversion or enlargement, or combination thereof, of an existing
3 structure which includes any occupied floor area of residential use; provided,
4 however, that for projects that solely comprise an addition to an existing
5 structure which would add occupied floor area in an amount less than 20
6 percent of the occupied floor area of the existing structure, the provisions of this
7 Section shall only apply to the new occupied square footage.
- 8 (l) "Residential use" shall mean any structure or portion thereof intended for
9 occupancy by uses as defined in Section 890.88 of this Code and shall not
10 include any use which qualifies as an accessory use, as defined and regulated
11 in Sections 204 through 204.5.
- 12 (m) "Sponsor" shall mean an applicant seeking approval for construction of a
13 residential development project subject to this Section and such applicant's
14 successors and assigns.

15 **SEC. 318.3. APPLICATION.**

16 (a) Program Area. The Downtown Residential Community Improvements
17 Neighborhood Program is hereby established and shall be implemented through district-
18 specific community improvements funds which apply in the following downtown residential
19 areas:

- 20 (i) Properties identified as "Residential Mixed-Use" in Map 3 (Land Use Plan) of the
21 Rincon Hill Area Plan of the San Francisco General Plan.
- 22 (b) Prior to the issuance by DBI of the first site or building permit for a residential
23 development project within the Program Area, the sponsor shall pay to the Treasurer a
24 Community Improvements Impact Fee of the following amounts for each net addition of gross
25 square feet of residential use.

1 (i) \$11.00 in the Rincon Hill downtown residential area, as described in (a)(i)
2 above.

3 (c) Upon payment of the Community Improvements Impact Fee in full to the
4 Treasurer and upon request of the sponsor, the Treasurer shall issue a certification that the
5 fee has been paid. The sponsor shall present such certification to the Planning Department,
6 DBI and MOH prior to the issuance by DBI of the first site or building permit for the residential
7 development project. DBI shall not issue the site or building permit without proof of payment
8 of the fee from the Treasurer. Any failure of the Treasurer, DBI, or the Planning Department
9 to give any notice under this Section shall not relieve a sponsor from compliance with this
10 Section. Where DBI inadvertently issues a site or building permit without payment of the fee,
11 DBI shall not issue any certificate of occupancy for the project without notification from the
12 Treasurer that the fee required by this Section has been paid. The procedure set forth in this
13 Subsection is not intended to preclude enforcement of the provisions of this Section under any
14 other section of this Code, or other authority under the laws of the State of California.

15 (d) The Community Improvements Impact Fee shall be revised effective January 1st
16 of the year following the effective date of this ordinance and on January 1st each year
17 thereafter by the percentage increase or decrease in the construction cost of providing these
18 improvements.

19 (e) Option for In-Kind Provision of Community Improvements. The Planning
20 Commission shall reduce the Community Improvements Impact Fee described in (b) above
21 for specific residential development proposals in cases where a project sponsor has entered
22 into an agreement with the City to provide in-kind improvements in the form of streetscaping,
23 sidewalk widening, neighborhood open space, community center, and other improvements
24 that result in new public infrastructure and facilities described in Section 318.6 below. For the
25 purposes of calculating the total value of in-kind community improvements, the project

1 sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind
2 community improvements from two independent contractors. Based on these estimates, the
3 Director of Planning shall determine their appropriate value and the Planning Commission
4 shall reduce the Community Improvements Impact Fee assessed to that project
5 proportionally.

6 (f) Option for Provision of Community Improvements via a Community Facilities
7 (Mello-Roos) District. The Planning Commission shall waive the Community Improvements
8 Impact Fee described in (b) above, either in whole or in part, for specific residential
9 development proposals in cases where one or more project sponsors have entered into an
10 agreement with the City to finance the entirety or a share of the improvements described in
11 Section 318.6 below privately by establishing a Community Facilities (Mello-Roos) District,
12 provided such a District can be shown to provide equal or greater financial means to fund and
13 implement the needed community improvements in a timely manner.

14 **SEC. 318.4. LIEN PROCEEDINGS.**

15 (a) A sponsor's failure to comply with the requirements of Sections 318.3, shall
16 constitute cause for the City to record a lien against the housing development project in the
17 sum of the infrastructure fee required under this ordinance, as adjusted under Section 313.3.
18 The fee required by this ordinance is due and payable to the Treasurer prior to issuance of the
19 first building or site permit for the development project. If, for any reason, the fee remains
20 unpaid following issuance of the permit, any amount due shall accrue interest at the rate of
21 one and one-half percent per month, or fraction thereof, from the date of issuance of the
22 permit until the date of final payment.

23 (b) If, for any reason, the fee imposed pursuant to this ordinance remains unpaid
24 following issuance of the permit, the Treasurer shall initiate proceedings in accordance with
25 Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid

1 balance of the fee, including interest, a lien against all parcels used for the housing
2 development project and shall send all notices required by that Article to the owner of the
3 property as well as the sponsor. The Treasurer shall also prepare a preliminary report
4 notifying the sponsor of a hearing to confirm such report by the Board of Supervisors at least
5 10 days before the date of the hearing. The report to the sponsor shall contain the sponsor's
6 name, a description of the sponsor's housing development project, a description of the parcels
7 of real property to be encumbered as set forth in the Assessor's Map Books for the current
8 year, a description of the alleged violation of this ordinance, and shall fix a time, date, and
9 place for hearing. The Treasurer shall cause this report to be mailed to the sponsor and each
10 owner of record of the parcels of real property subject to lien. Except for the release of lien
11 recording fee authorize by Administrative Code Section 10.237, all sums collected by the Tax
12 Collector pursuant to this ordinance shall be held in trust by the Treasurer and deposited in
13 the Rincon Hill Community Improvements Fund established in Section 313.6.

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

21 **SEC. 318.5. COMMUNITY IMPROVEMENTS IMPACT FEE REFUND WHEN**
22 **BUILDING PERMIT EXPIRES PRIOR TO COMPLETION OF WORK AND**
23 **COMMENCEMENT OF OCCUPANCY.**

24 In the event a building permit expires prior to completion of the work on and
25 commencement of occupancy of a residential development project so that it will be necessary

1 to obtain a new permit to carry out any development, the obligation to comply with this
2 ordinance shall be cancelled, and any Community Improvements Impact Fee previously paid
3 to the Treasurer shall be refunded. If and when the sponsor applies for a new permit, the
4 procedures set forth in this ordinance regarding payment of the Community Improvements
5 Impact Fee shall be followed.

6 **SEC. 318.6. RINCON HILL COMMUNITY IMPROVEMENTS FUND.**

7 (a) There is hereby established a separate fund set aside for a special purpose
8 entitled the Rincon Hill Community Improvements Fund ("Fund"). All monies collected by the
9 Treasurer pursuant to Section 318.3 shall be deposited in a special fund maintained by the
10 Controller. The receipts in the Fund are hereby appropriated in accordance with law to be
11 used solely to fund public infrastructure subject to the conditions of this Section.

12 (b) All monies deposited in the Fund shall be used solely to design, engineer,
13 acquire, and develop neighborhood open spaces, streetscape improvements, a community
14 center, and other improvements that result in new publicly-accessible facilities within the
15 Rincon Hill Downtown Residential (DTR) District or within 250 feet of the District. These
16 improvements shall be consistent with the Rincon Hill Public Open Space System as
17 described in Map 5 of the Rincon Hill Area Plan of the General Plan, and any Rincon Hill
18 Improvements Plan that is approved by the Board of Supervisors in the future, except that
19 monies from the Fund may be used by the Planning Commission to commission economic
20 analyses for the purpose of revising the fee pursuant to Section 318.3(d) above, to complete a
21 nexus study to demonstrate the relationship between residential development and the need
22 for public facilities if this is deemed necessary, or to commission landscape architectural or
23 other planning, design and engineering services in support of the proposed public
24 improvements, provided they do not exceed a total of \$250,000. No portion of the Fund may
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1 be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar
2 expense of any public entity.

3 (c) The Controller's Office shall file an annual report with the Board of Supervisors
4 beginning one year after the effective date of this ordinance, which report shall set forth the
5 amount of money collected in the Fund. The Fund shall be administered by the Planning
6 Commission.

7 (d) A public hearing shall be held by both the Planning and Recreation and Parks
8 Commissions to elicit public comment on proposals for the acquisition of property using
9 monies in the Fund. Notice of public hearings shall be published in an official newspaper at
10 least 20 days prior to the date of the hearing, which notice shall set forth the time, place, and
11 purpose of the hearing. The hearing may be continued to a later date by a majority vote of the
12 members of both Commissions present at the hearing. At a joint public hearing, a quorum of
13 the Planning and Recreation and Parks Commissions may vote to allocate the monies in the
14 Fund for acquisition of property for park use and/or for development of property for park use.

15 (e) The Planning Commission shall work with other City agencies and commissions,
16 specifically the Department of Recreation and Parks, Department of Public Works, and the
17 Metropolitan Transportation Agency, to develop agreements related to the administration of
18 the development of new public facilities within public rights-of-way or on any acquired property
19 designed for park use, using such monies as have been allocated for that purpose at a
20 hearing of the Planning Commission.

21 (f) The Director of Planning shall have the authority to prescribe rules and
22 regulations governing the Fund, which are consistent with this ordinance.

23 **SEC. 318.7. DIRECTOR OF PLANNING'S EVALUATION.**

24 Within 18 months following the effective date of this ordinance, the Director of Planning
25 shall report to the Planning Commission, the Board of Supervisors, and the Mayor on the

1 status of compliance with this ordinance, the efficacy of this ordinance in funding infrastructure
2 in the Program Area, and the impact of the Program on property values in the vicinity of the
3 Project Area.

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5 **SEC. 318.8. PARTIAL INVALIDITY AND SEVERABILITY.**

6 If any provision of this ordinance, or its application to any residential development
7 project is held invalid, the remainder of the ordinance, or the application of such provision to
8 other residential development projects shall not be affected thereby.

9 **SEC. 318.9. STUDY.**

10 No later than July 1, 2010, and every five years thereafter, the Director of Planning
11 shall complete a study to determine the demand for infrastructure to serve residential
12 development projects in the downtown residential areas and, based on the study, recommend
13 to the Board of Supervisors changes in the requirements for community improvement impact
14 fees imposed on residential development in this ordinance if necessary to help meet that
15 demand.

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

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19 By: _____
20 JUDITH A. BOYAJIAN
21 Deputy City Attorney

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