



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: July 13, 2023

90-Day Deadline: September 28, 2023

Project Name: Planning, Building Codes - Development Impact Fee Indexing, Deferral, and Waivers; Adoption of Nexus
Case Number: 2023-005461PCA [Board File No. 230764]
Initiated by: Mayor London N. Breed / Introduced June 27, 2023
Staff Contact: Daniel A. Sider, AICP
dan.sider@sfgov.org, 628-652-7539

Recommendation: Approval

Planning Code Amendment

The proposed Ordinance would amend the Planning Code’s development impact fee requirements [excepting the Inclusionary Housing Fee] to 1) modify annual impact fee indexing; 2) “lock-in” impact fees from the time of project approval; and 3) reactivate the City’s now-expired impact fee deferral program.

The proposed Ordinance would also (a) exempt certain development projects in PDR (Production, Distribution, and Repair) Zoning Districts and the C-2 (Community Business) Zoning District from all impact fees for a three-year period and (b) adopt the most recent city-wide nexus analysis.

The Way It Is Now:

1. Impact fees are adjusted annually on January 1 by the Annual Infrastructure Construction Cost Increase Estimate (AICCIE), with the exception of the Inclusionary Housing Fee that is subject to a different adjustment methodology.
2. Once assessed for a given project, impact fees increase annually on January 1 until a first construction

document for that project has been issued.

3. Impact fees are due upon issuance of a first construction document.
4. All non-residential development projects are required to pay impact fees in all Zoning Districts.
5. Planning Code provisions relating to impact fees refer to an outdated nexus study from 2014.

The Way It Would Be:

1. Instead of the AICCIE, impact fees other than the Inclusionary Housing Fee would be annually increased on January 1 by a flat 2%.
2. Impact fees other than the Inclusionary Housing Fee would be “locked-in” at the amounts assessed upon project approval rather than continuing to increase every January 1 until the issuance of a first construction document.
3. Payment of impact fees other than the Inclusionary Housing Fee could be deferred until first certificate of occupancy. This would reactivate and modify a program that sunset in 2013.
4. New retail and industrial projects in the City’s PDR Zoning Districts, as well as projects with hotel, entertainment, bar, and open space uses in the City’s C-2 Districts, would be exempt from paying impact fees for the next three years.
5. The Planning Code would refer to an updated San Francisco Citywide Nexus Analysis, which provides legal rationale for imposing impact fees for recreation and open space, childcare facilities, complete streets, and transit infrastructure.

Issues and Considerations

The proposed Ordinance makes changes to the way that the City sets, imposes, and collects impact fees. Importantly, it creates predictability and stability by setting a flat rate at which impact fees increase over time, assigns and stabilizes fees upon project approval, and reinstates a fee deferral program to allow projects to pay their fees immediately prior to the project being ready for occupancy. The legislation also waives fees for certain commercial developments as part of the City’s economic recovery efforts.

The proposed Ordinance complements another piece of proposed legislation (2023-005422PCA / BF 230769, also before the Commission on July 13) that would implement the Affordable Housing Technical Advisory Committee’s (TAC) recommendations regarding the inclusionary housing program. As introduced, this corresponding proposal provides a one-third discount on all impact fees aside from the base inclusionary housing fee for (1) projects approved before 11/1/23 so long as a first construction document is issued before 5/1/29 and (2) projects approved between 11/1/23 and 11/1/26 so long as a first construction document is issued within 30 months of project approval.

Both pieces of legislation are intended to make development more predictable, easier, and more financially feasible in order to accomplish the City's housing goals as set forth in the recently adopted Housing Element.

The following are key issues and considerations relating to the proposed impact fee Ordinance's modifications to the way the City sets, imposes, and collects impact fees.

1. Currently, most impact fees are increased each year by the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE). This is an index that is produced by the City's Office of Resilience and Capital Planning and is a projected rate of construction cost escalation for the upcoming calendar year, used primarily to inform cost estimates for future capital projects in the 2-Year Capital Budget and 10-Year Capital Plan. The AICCIE relies on past construction cost inflation data, market trends, and a variety of national, state, and local commercial and institutional construction cost inflation indices. Since 2010, the AICCIE has fluctuated between 3 percent and 6 percent annually.

While useful for capital planning and budgeting, current Code provisions requiring that this index be used to index impact fees can result in unpredictable and high annual escalation. Project sponsors have no foresight into how much the fees may increase each year. In many cases, fees are often significantly higher at the time of payment - after several years of escalation - than they would have been when a project was approved. Impact fees have escalated by more than 30% in the last 5 years alone. The proposed Ordinance escalates development impact fees at a flat 2% rate each year, which would provide certainty about what the fee rates will be in future years to both the projects that pay these fees as well as the City departments that spend the fees. The flat 2% rate increase would generally keep-up with inflation.

2. The proposed Ordinance makes impact fee assessments constant and reliable. Specifically, fee amounts would be established *and then locked-in* when a project is approved by the Planning Department or Commission, as opposed to the current requirement that impact fees continually escalate annually until issuance of a first construction document.

This would provide additional certainty for projects at the time they are approved, since impact fees would otherwise continue to escalate unpredictably during a subsequent permitting process that can in some cases take years.

3. The proposed Ordinance reinstates the fee deferral program (contained in Section 107A.13.3 of the Building Code), allowing projects to pay impact fees after construction and immediately prior to occupancy, instead of before construction as is currently required. While the Building Code contains provisions setting forth a fee deferral program that was widely used between 2010-2013 during the City's recovery from the Great Recession, "sunset" language in both the Planning and Building Codes makes the program inoperative. The reactivated deferral program would depart from the earlier program in two important ways: (1) the earlier program's "fee deferral surcharge" - which is contained in the Building Code as a de facto interest charge - would be eliminated and (2) Inclusionary Affordable Housing Impact Fees would be ineligible to be deferred through the program.

In the current high interest rate environment, reinstating the fee deferral program would result in

significant savings on financing costs, rendering more development projects financially feasible and able to move forward, providing housing, jobs, and tax revenue for the City. The City's Economic Recovery Task Force convened in 2020 to identify strategies for supporting our economic recovery from the Covid-19 pandemic and recommended reinstating the fee deferral program. Elimination of the surcharge and exempting affordable housing fees would increase the efficacy of the fee deferral program while also reflecting the immediacy of the need to collect impact fees dedicated to affordable housing.

4. The proposed Ordinance exempts certain types of non-residential development projects from paying impact fees for the next three years as the City's economic recovery from the Covid-19 pandemic continues. These include projects on lots with less than .25 FAR of existing development that add between 20,000 and 200,00 gross square feet of either (1) retail or industrial uses on PDR-zoned lots or (2) hotel, restaurant, bar, outdoor activity, and entertainment uses on C-2-zoned lots.

This narrow, three-year waiver would encourage investment in these important businesses as high costs and rising interest rates continue to challenge local businesses and entrepreneurs. Rising interest rates and high construction costs have created challenges for previously approved projects to secure financing and initiate construction, thus delaying the job opportunities and other community benefits associated with these developments.

The proposed Ordinance could result in a modest reduction to the total theoretical amount of impact fee revenue the City could expect to receive from the development pipeline. Additionally, reactivation of the fee deferral program could result in impact fee revenue being received by the City later in time than would otherwise be expected. However, if the proposed Ordinance has its intended effect of stimulating and accelerating development, it would compensate for both of these potential effects – perhaps even more than offsetting them - resulting in increased fee revenue being received by the City earlier in time.

The measures in the proposed Ordinance are intended to make development more predictable, easier, and more financially feasible, which would contribute to the City's recovery from the pandemic and supplement efforts to accomplish the policy goals outlined in the Housing Element.

General Plan Compliance

On balance, the proposed Ordinance is consistent with the General Plan, and was drafted in part to implement policies contained in the Housing Element.

Racial and Social Equity Analysis

It is difficult to tie the proposed Ordinance to a negative or positive impact in advancing the City's racial and social equity goals. In general, the proposed changes are intended to stimulate development in order to provide more housing, accommodate more businesses and jobs, and grow the local economy and tax base. These benefits would accrue broadly to San Francisco and are unlikely to impact any particular racial or social group.

Implementation

The proposed Ordinance would add a slight amount of time and complexity when assessing impact fees, especially for projects that enroll in the reactivated fee deferral program, although some of this impact would be

mitigated through the removal of the requirement that approved, pre-construction projects have their fees indexed every year. Regardless, the proposed changes can be implemented without increasing permit costs or meaningfully adding to review time.

Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

Basis for Recommendation

The Department supports the goals and measures outlined in the proposed Ordinance, which would provide reliability and predictability for developers, the City staff collecting fees, and the City staff budgeting and spending the fee revenue. Importantly, the proposal would stimulate and accelerate development in San Francisco by locking-in impact fee rates and deferring when fees are paid. This proposed Ordinance is an important component in satisfying the obligations set out in the City's Housing Element.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed Ordinance is not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because it would lead to no direct or indirect physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 230764



PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: July 13, 2023

Project Name: Planning, Building Codes - Development Impact Fee Indexing, Deferral, and Waivers; Adoption of Nexus
Case Number: 2023-005461PCA [Board File No. 230764]
Initiated by: Mayor Breed / Introduced June 27, 2023
Staff Contact: Daniel A. Sider, AICP
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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO 1) MODIFY THE ANNUAL INDEXING OF CERTAIN DEVELOPMENT IMPACT FEES, WITH THE EXCEPTION OF INCLUSIONARY HOUSING FEES; 2) PROVIDE THAT THE TYPE AND RATES OF APPLICABLE DEVELOPMENT IMPACT FEES, WITH THE EXCEPTION OF INCLUSIONARY HOUSING FEES, SHALL BE DETERMINED AT THE TIME OF PROJECT APPROVAL; 3) EXEMPT ELIGIBLE DEVELOPMENT PROJECTS IN PDR (PRODUCTION, DISTRIBUTION, AND REPAIR) DISTRICTS AND THE C-2 (COMMUNITY BUSINESS) DISTRICT FROM ALL DEVELOPMENT IMPACT FEES FOR A THREE-YEAR PERIOD; 4) ALLOW PAYMENT OF DEVELOPMENT IMPACT FEES, WITH THE EXCEPTION OF FEES DEPOSITED IN THE CITYWIDE AFFORDABLE HOUSING FUND, TO BE DEFERRED UNTIL ISSUANCE OF THE FIRST CERTIFICATE OF OCCUPANCY; AND 5) ADOPT THE SAN FRANCISCO CITYWIDE NEXUS ANALYSIS SUPPORTING EXISTING DEVELOPMENT IMPACT FEES FOR RECREATION AND OPEN SPACE, CHILDCARE FACILITIES, COMPLETE STREETS, AND TRANSIT INFRASTRUCTURE AND MAKING CONFORMING REVISIONS TO ARTICLE 4 OF THE PLANNING CODE; AMENDING THE BUILDING CODE TO ALLOW PAYMENT OF DEVELOPMENT IMPACT FEES, WITH THE EXCEPTION OF FEES DEPOSITED IN THE CITYWIDE AFFORDABLE HOUSING FUND, TO BE DEFERRED UNTIL ISSUANCE OF THE FIRST CERTIFICATE OF OCCUPANCY AND REPEALING THE FEE DEFERRAL SURCHARGE; AFFIRMING THE PLANNING DEPARTMENT'S DETERMINATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MAKING FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND THE EIGHT PRIORITY POLICIES OF PLANNING CODE, SECTION 101.1; AND MAKING FINDINGS OF PUBLIC NECESSITY, CONVENIENCE, AND WELFARE PURSUANT TO PLANNING CODE, SECTION 302.

WHEREAS, on June 27, 2023 Mayor Breed introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 230764, which would amend the Planning Code to 1) modify the annual indexing of certain development impact fees, with the exception of inclusionary housing fees; 2) provide that the type and rates of applicable development impact fees, with the exception of inclusionary housing fees, shall be determined at the time of project approval; 3) exempt eligible development projects in PDR (Production, Distribution, and Repair) Districts and the C-2 (Community Business) District from all development impact fees for a three-year period; 4) allow payment of development impact fees, with the exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the first certificate of occupancy; and 5) adopt the San Francisco Citywide Nexus Analysis supporting existing development impact fees for recreation and open space, childcare facilities, complete streets, and transit infrastructure and making conforming revisions to Article 4 of the Planning Code; amending the Building Code to allow payment of development impact fees, with the exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the first certificate of occupancy and repealing the fee deferral surcharge; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on July 13, 2023; and,

WHEREAS, the proposed Ordinance is not defined as a project under CEQA Guidelines Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The proposed Ordinance makes changes to the way that the City sets, imposes, and collects impact fees. Importantly, it creates predictability and stability by setting a flat rate at which impact fees increase over time,

assigns and stabilizes fees upon project approval, and reinstates a fee deferral program to allow projects to pay their fees immediately prior to the project being ready for occupancy. The legislation also waives fees for certain commercial developments as part of the City's economic recovery efforts.

The proposed Ordinance complements another piece of proposed legislation (2023-005422PCA / BF 230769, also before the Commission on July 13) that would implement the Affordable Housing Technical Advisory Committee's (TAC) recommendations regarding the inclusionary housing program. As introduced, this corresponding proposal provides a one-third discount on all impact fees aside from the base inclusionary housing fee for (1) projects approved before 11/1/23 so long as a first construction document is issued before 5/1/29 and (2) projects approved between 11/1/23 and 11/1/26 so long as a first construction document is issued within 30 months of project approval.

Both pieces of legislation are intended to make development more predictable, easier, and more financially feasible in order to accomplish the City's housing goals as set forth in the recently adopted Housing Element.

Currently, most impact fees are increased each year by the Annual Infrastructure Construction Cost Inflation Estimate (AICCIE). This is an index that is produced by the City's Office of Resilience and Capital Planning and is a projected rate of construction cost escalation for the upcoming calendar year, used primarily to inform cost estimates for future capital projects in the 2-Year Capital Budget and 10-Year Capital Plan. The AICCIE relies on past construction cost inflation data, market trends, and a variety of national, state, and local commercial and institutional construction cost inflation indices. Since 2010, the AICCIE has fluctuated between 3 percent and 6 percent annually.

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This would provide additional certainty for projects at the time they are approved, since impact fees would otherwise continue to escalate unpredictably during a subsequent permitting process that can in some cases take years.

The proposed Ordinance reinstates the fee deferral program (contained in Section 107A.13.3 of the Building Code), allowing projects to pay impact fees after construction and immediately prior to occupancy, instead of before construction as is currently required. While the Building Code contains provisions setting forth a fee deferral program that was widely used between 2010-2013 during the City's recovery from the Great

Recession, “sunset” language in both the Planning and Building Codes makes the program inoperative. The reactivated deferral program would depart from the earlier program in two important ways: (1) the earlier program’s “fee deferral surcharge” – which is contained in the Building Code as a de facto interest charge - would be eliminated and (2) Inclusionary Affordable Housing Impact Fees would be ineligible to be deferred through the program.

In the current high interest rate environment, reinstating the fee deferral program would result in significant savings on financing costs, rendering more development projects financially feasible and able to move forward, providing housing, jobs, and tax revenue for the City. The City’s Economic Recovery Task Force convened in 2020 to identify strategies for supporting our economic recovery from the Covid-19 pandemic and recommended reinstating the fee deferral program. Elimination of the surcharge and exempting affordable housing fees would increase the efficacy of the fee deferral program while also reflecting the immediacy of the need to collect impact fees dedicated to affordable housing.

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This narrow, three-year waiver would encourage investment in these important businesses as high costs and rising interest rates continue to challenge local businesses and entrepreneurs. Rising interest rates and high construction costs have created challenges for previously approved projects to secure financing and initiate construction, thus delaying the job opportunities and other community benefits associated with these developments.

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The measures in the proposed Ordinance are intended to make development more predictable, easier, and more financially feasible, which would contribute to the City’s recovery from the pandemic and supplement efforts to accomplish the policy goals outlined in the Housing Element.

The Commission supports the goals and measures outlined in the proposed Ordinance, which would provide reliability and predictability for developers, the City staff collecting fees, and the City staff budgeting and spending the fee revenue. Importantly, the proposal would stimulate and accelerate development in San Francisco by locking-in impact fee rates and deferring when fees are paid. This proposed Ordinance is an important component in satisfying the obligations set out in the City’s Housing Element.

General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 4.A

SUBSTANTIALLY EXPAND THE AMOUNT OF PERMANENTLY AFFORDABLE HOUSING FOR EXTREMELY LOW- TO MODERATE-INCOME HOUSEHOLDS.

OBJECTIVE 4.B

EXPAND SMALL AND MID-RISE MULTI-FAMILY HOUSING PRODUCTION TO SERVE OUR WORKFORCE, PRIORITIZING MIDDLE-INCOME HOUSEHOLDS.

OBJECTIVE 4.C

EXPAND AND DIVERSIFY HOUSING TYPES FOR ALL.

The proposed Ordinance is designed to create more certainty in the development process, and also to create an environment more conducive to project feasibility. In doing so, a greater number of projects are likely to be built and thus a greater number of projects would pay impact fees, especially impact fees that provide funds for the construction of permanently affordable housing at a range of affordability levels.

IMPLEMENTING PROGRAMS

REDUCING CONSTRAINTS ON HOUSING DEVELOPMENT, MAINTENANCE, AND IMPROVEMENT

Policy 8.1.3

Modify requirement to collect impact fees upon issuance of a Certificate of Final Completion and Occupancy instead of issuance of building permit, in order to support small and mid-size multifamily housing projects.

By reactivating the fee deferral program, the proposed Ordinance does exactly this.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

OBJECTIVE 4

PROMOTE AND ATTRACT THOSE ECONOMIC ACTIVITIES WITH POTENTIAL BENEFIT TO THE CITY.

POLICY 4.2.

Promote and attract those economic activities with potential benefit to the City.

OBJECTIVE 8

ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL CENTER FOR CONVENTIONS AND VISITOR TRADE.

POLICY 8.1

Guide the location of additional tourist related activities to minimize their adverse impacts on existing residential, commercial, and industrial activities.

By providing industrial uses and hospitality-oriented uses in the C-2 District – which includes many of the City's tourist-oriented waterfront-adjacent areas – a time-limited impact fee waiver, the proposed Ordinance would promote both industrial activity and our visitor and tourism economy.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and would not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character. On the contrary, it would help make new housing at all levels of affordability more feasible.

3. That the City's supply of affordable housing be preserved and enhanced;

By making projects feasible that wouldn't otherwise be feasible, the proposed Ordinance would lead to the collection of impact fees that might not otherwise be collected and would lead to increased funding to grow the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors, and future opportunities for resident employment or ownership in these sectors would not be impaired. By providing a time-limited waiver of impact fees for certain industrial uses, the City's industrial base would be enhanced.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks or historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas. On the contrary, it could lead to increased impact fee revenues dedicated for park maintenance and expansion.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on July 13, 2023.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: July 13, 2023

BOARD of SUPERVISORS



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MEMORANDUM

Date: June 30, 2023
To: Planning Department / Commission
From: Erica Major, Clerk of the Land Use and Transportation Committee
Subject: Board of Supervisors Legislation Referral - File No. 230764
Planning, Building Codes - Development Impact Fee Indexing, Deferral, and Waivers;
Adoption of Nexus Study

- California Environmental Quality Act (CEQA) Determination
(*California Public Resources Code, Sections 21000 et seq.*)
 - Ordinance / Resolution
 - Ballot Measure

- Amendment to the Planning Code, including the following Findings:
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
 - General Plan
 - Planning Code, Section 101.1
 - Planning Code, Section 302

- Amendment to the Administrative Code, involving Land Use/Planning
(*Board Rule 3.23: 30 days for possible Planning Department review*)

- General Plan Referral for Non-Planning Code Amendments
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)

- Historic Preservation Commission
 - Landmark (*Planning Code, Section 1004.3*)
 - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
 - Mills Act Contract (*Government Code, Section 50280*)
 - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Erica Major at Erica.Major@sfgov.org.

1 [Planning, Building Codes - Development Impact Fee Indexing, Deferral, and Waivers;
2 Adoption of Nexus Study]

3 **Ordinance amending the Planning Code to 1) modify the annual indexing of certain**
4 **development impact fees, with the exception of inclusionary housing fees; 2) provide**
5 **that the type and rates of applicable development impact fees, with the exception of**
6 **inclusionary housing fees, shall be determined at the time of project approval; 3)**
7 **exempt eligible development projects in PDR (Production, Distribution, and Repair)**
8 **Districts and the C-2 (Community Business) District from all development impact fees**
9 **for a three-year period; 4) allow payment of development impact fees, with the**
10 **exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred**
11 **until issuance of the first certificate of occupancy; and 5) adopt the San Francisco**
12 **Citywide Nexus Analysis supporting existing development impact fees for recreation**
13 **and open space, childcare facilities, complete streets, and transit infrastructure and**
14 **making conforming revisions to Article 4 of the Planning Code; amending the Building**
15 **Code to allow payment of development impact fees, with the exception of fees**
16 **deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the**
17 **first certificate of occupancy and repealing the fee deferral surcharge; affirming the**
18 **Planning Department's determination under the California Environmental Quality Act;**
19 **making findings of consistency with the General Plan, and the eight priority policies of**
20 **Planning Code, Section 101.1; and making findings of public necessity, convenience,**
21 **and welfare pursuant to Planning Code, Section 302.**

22 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.
24 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
25 **Board amendment additions** are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. Land Use and Environmental Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board affirms this determination.

(b) On _____, the Planning Commission, in Resolution No. _____, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No. _____, and is incorporated herein by reference.

(c) Pursuant to Planning Code Section 302, the Board finds that this Planning Code amendment will serve the public necessity, convenience, and welfare for the reasons set forth in Planning Commission Resolution No. _____, and the Board incorporates such reasons herein by reference. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No. _____.

Section 2. Background and Findings.

(a) Article 4 of the Planning Code contains many of the City’s development impact fees. Under Planning Code Section 409, the Controller is charged with reviewing development impact fees and adjusting the fees annually on January 1. The purpose of the

1 annual adjustment is to “establish a reasonable estimate of construction cost inflation for the
2 next calendar year for a mix of public infrastructure and facilities in San Francisco.”

3 (b) Based on the adjustment factor, the Planning Department and the Development
4 Fee Collection Unit at the Department of Building Inspection (DBI) provide notice of the
5 annual adjustments. The Planning Department calculates the type and amount of any
6 applicable development impact fees no later than the issuance of the building or site permit for
7 a development project. The Planning Department sends written or electronic notification to
8 the Development Fee Collection Unit at DBI.

9 (c) The Development Fee Collection Unit collects payment of all impact fees, which
10 are due and payable no later than issuance of the “first construction document” as defined in
11 Section 107A.13.1 of the Building Code.

12 (d) For years, the City has relied upon the Annual Infrastructure Construction Cost
13 Inflation Estimate (“AICCIE”) as the index for annual development fee adjustments, with the
14 exception of the Inclusionary Housing Fee that is subject to adjustment in Planning Code
15 Section 415 *et seq.* The City uses the AICCIE to forecast construction costs for the City’s
16 two-year capital budget and the 10-year capital plan. Developed by the Office of the City
17 Administrator’s Capital Planning Group, the AICCIE relies on past construction cost inflation
18 data, market trends, and a variety of national, state, and local commercial and institutional
19 construction cost inflation indices. Since 2010, the AICCIE has fluctuated between 3 percent
20 and 6 percent annually.

21 (e) The AICCIE is designed to ensure that the City budgets sufficient funding for
22 capital projects many years into the future. Because of this forward-looking budgeting
23 function, the AICCIE does not always reflect near-term trends in cost escalation. This can
24 create barriers to the economic feasibility of private development projects during economic
25 downturns. Additionally, the unpredictability of variable impact fee escalation can discourage

1 development and reduce the likelihood that the City will achieve key policy goals, like the
2 production of housing, growing the tax base, and creating jobs.

3 (f) It is reasonable to consider alternative indexing options. The Board finds that a 2
4 percent escalation rate would provide certainty and predictability for all parties involved in the
5 development impact fee process, including developers, City staff collecting fees, and City staff
6 budgeting and spending the fee revenue. Though the 2 percent escalation rate is lower than
7 AICCIE rates over the last decade, this flat rate will enable the fees to escalate along with
8 near term construction cost increases, while still providing predictability to third parties.

9 (g) To provide further certainty to project sponsors, it is reasonable to calculate the
10 types of applicable impact fees and the rates of those fees at the time the Planning
11 Commission or Zoning Administrator approves a development application, or for projects that
12 do not require such an approval, at the time the City issues the building permit. In addition, it
13 is reasonable to not escalate those fees between the time they are calculated and the time the
14 project sponsor pays the fees, which is most commonly just prior to the issuance of the first
15 construction document.

16 (h) While it is reasonable to provide certainty in the calculation of fees at the time of
17 project approval or building permit issuance, and not escalate the fees after they are
18 calculated, in some circumstances it may be appropriate to revisit the fee calculation,
19 especially in instances of prolonged delay or major revisions to a project. The Board finds
20 that it is reasonable to require recalculation of fees when a previously approved project is
21 modified, extended, or renewed.

22 (i) This ordinance does not modify any aspect of the Inclusionary Affordable Housing
23 Fee, set forth in Planning Code section 415 *et seq.*

24 (j) Economic cycles create volatility in the building and construction industries,
25 negatively impacting the availability of financing and the viability of a range of development

1 projects. In addition to typical economic volatility, rising interest rates and high construction
2 costs have complicated the City's financial recovery from the COVID-19 pandemic. Currently,
3 the Development Fee Collection Unit requires payment of any applicable development impact
4 fees prior to the issuance of the first construction document. By giving project sponsors the
5 option to defer payment of impact fees, the City will help mitigate the financial hardships
6 caused by economic cycles generally, in addition to current market conditions. The Board
7 finds that allowing developers the option to defer payment of development impact fees to a
8 time no later than the first certificate of occupancy, as that term is defined in Building Code
9 107A.13.1, is reasonable to allow project sponsors to obtain financing for development
10 projects that would otherwise be unable to proceed under adverse economic conditions.

11 (k) Rising interest rates and high construction costs have created challenges for
12 previously-approved projects to secure a complete financing package and initiate
13 construction. These adverse economic conditions are impacting PDR (Production,
14 Distribution, and Repair) and Retail projects in the PDR Districts, and hotel/entertainment
15 projects in the C-2 District, and delaying the job opportunities and other community benefits
16 associated with these developments. Waiving development fees for these types of projects
17 will allow those developments to proceed; such short-term waivers will economically stimulate
18 similar projects in the upcoming three-year period. The Board finds that a limited and short-
19 term fee waiver is reasonable to enable these projects to proceed to construction and
20 incentivize similar proposals.

21 (l) Pursuant to Planning Code Section 410, the Planning Department, the Office of
22 Resilience and Capital Planning, and the City Attorney's Office retained Hatch Consulting to
23 update the nexus analysis and level of service analysis for various existing development
24 impact fees. These studies were conducted prior to January 1, 2022, analyze the impacts to
25 public facilities created by new development, and calculate the nexus between the new

1 development and the need for new public facilities. The nexus studies calculate the potential
2 fees on a square footage basis. Consistent with the California Mitigation Fee Act,
3 Government Code Section 66000 *et seq.*, the Board adopts the San Francisco Citywide
4 Nexus Analysis prepared by Hatch Associates Consultants, Inc., dated December 2021, and
5 the San Francisco Infrastructure Level of Service Analysis prepared by Hatch Associates
6 Consultants, Inc., dated December 2021, both of which are on file with the Clerk of the Board
7 of Supervisors in File No. _____.

8 (m) Additionally, on May 9, 2023 the Board adopted the Capital Plan Update for Fiscal
9 Years 2024-2033, on file with the Clerk of the Board of Supervisors in File No. 230265, which
10 details the City’s capital improvement plan for the next decade. The Board incorporates this
11 plan by reference.

12 (n) This ordinance does not establish, increase, or impose a fee within the meaning of
13 Government Code Section 66001(a).

14 (o) On _____, _____, at a duly noticed public hearing, the Building
15 Inspection Commission considered this ordinance in accordance with Charter Section D3.750-
16 5 and Building Code Section 104A.2.11.1.1. A copy of a letter from the Secretary of the
17 Building Inspection Commission regarding the Commission’s recommendation is on file with
18 the Clerk of the Board of Supervisors in File No. _____.

19 (p) No local findings are required under California Health and Safety Code Section
20 17958.7 because the amendments to the Building Code contained in this ordinance do not
21 regulate materials or manner of construction or repair, and instead relate in their entirety to
22 administrative procedures for implementing the code, which are expressly excluded from the
23 definition of a “building standard” by California Health and Safety Code Section 18909(c).

24
25

1 Section 3. Article 4 of the Planning Code is hereby amended by revising Sections 401,
2 402, 403, 406, and 409, to read as follows:

3
4 **SEC. 401. DEFINITIONS.**

5 * * * *

6 **F**

7 “Final Approval.” For the purposes of this Section shall mean 1) approval of a project’s first
8 Development Application, unless such approval is appealed; or 2) if a project only requires a building
9 permit, issuance of the first site or building permit, unless such permit is appealed; or 3) if the first
10 Development Application or first site or building permit is appealed, then the final decision upholding
11 the Development Application, or first site or building permit, on the appeal by the relevant City Board
12 or Commission.

13 "First Certificate of Occupancy." Either a temporary Certificate of Occupancy or a
14 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code
15 Section 109A, whichever is issued first.

16 * * * *

17
18 **SEC. 402. PROCEDURE FOR PAYMENT AND COLLECTION OF DEVELOPMENT**
19 **FEES.**

20 (a) **Collection by the Development Fee Collection Unit.** Except as otherwise
21 authorized in Section 411.9, all development impact and in-lieu fees authorized by this Code
22 shall be collected by the Development Fee Collection Unit at DBI in accordance with Section
23 107A.13 of the San Francisco Building Code.

24 (b) **Required Department Notice to Development Fee Collection Unit.** ~~Prior to~~
25 ~~Issuance of Building or Site Permit;~~ **Request to Record Notice of Fee.**

1 (1) **Required Notice.** When the Planning Department determines that a
2 development project is subject to one or more development fees or development impact
3 requirements as set forth in Section 402(e), ~~but in any case no later than prior to issuance of the~~
4 ~~building or site permit for a development project~~, the Department shall send written or electronic
5 notification to the Development Fee Collection Unit at DBI, and also to MOH, MTA or other
6 applicable agency that administers an applicable development fee or development impact
7 requirement, that:

8 (i) identifies the development project,

9 (ii) lists which specific development fees and/or development impact
10 requirements are applicable and the legal authorization for their application,

11 (iii) specifies the dollar amount of the development fee or fees that the
12 Department calculates is owed to the City or that the project sponsor has elected to satisfy a
13 development impact requirement through the provision of physical or "in-kind" improvements,
14 and

15 (iv) lists the name and contact information for the staff person at each agency or
16 department responsible for calculating the development fee or monitoring compliance with the
17 development impact requirement for physical or in-kind improvements.

18 (2) **Amended Notices.** The Department shall send an amended notice to the
19 Development Fee Collection Unit, and also to any department or agency that received the
20 initial notice, if at any time subsequent to its initial notice:

21 (i) any of the information required by subsection (1) above is changed or
22 modified, or

23 (ii) the development project is modified by the Department or Commission
24 during its review of the project and the modifications change the dollar amount of the
25 development fee or the scope of any development impact requirement.

1 **(3) Optional Recordation of Notice of Special Restrictions Prior to Issuance**

2 **of Building or Site Permit.** Prior to issuance of a building or site permit for a development
3 project subject to a development fee or development impact requirement, the Department
4 may request the Project Sponsor to record a notice with the County Recorder that a
5 development project is subject to a development fee or development impact requirement. The
6 County Recorder shall serve or mail a copy of such notice to the persons liable for payment of
7 the fee or satisfaction of the requirement and the owners of the real property described in the
8 notice. The notice shall include:

9 (i) a description of the real property subject to the development fee or
10 development impact requirement,

11 (ii) a statement that the development project is subject to the imposition of the
12 development fee or development impact requirement, and

13 (iii) a statement that the dollar amount of the fee or the specific development
14 impact requirement to which the project is subject has been determined under Article 4 of this
15 Code and citing the applicable section number.

16 **(c) Process for Revisions of Determination of Development Impact Fee(s) or**
17 **Development Impact Requirement(s).** In the event that the Department or the Commission
18 takes action affecting any development project subject to this Article and such action is
19 subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board
20 of Supervisors, or by court action, the building permit or building permit application for such
21 development project shall be remanded to the Department to determine whether the
22 development project has been changed in a manner which affects the calculation of the
23 amount of development fees or development impact requirements required under this Article
24 and, if so, the Department shall revise the requirement imposed on the permit application in
25 compliance with this Article within 30 days of such remand and notify the project sponsor in

1 writing of such revision or that a revision is not required. The Department shall notify the
2 Development Fee Collection Unit at DBI if the revision materially affects the development fee
3 requirements originally imposed under this Article so that the Development Fee Collection
4 Unit update the Project Development Fee Report and re-issue the associated building or site
5 permit for the project, if necessary, to ensure that any revised development fees or
6 development impact requirements are enforced.

7 (d) **Timing of Fee Payments.** All impact fees are due and payable to the
8 Development Fee Collection Unit at DBI at the time of, and in no event later than, issuance of
9 the “first construction document” as defined in Section 401 of this Code and Section
10 107A.13.1 of the Building Code provided that a project sponsor may defer payment of the fee,
11 excluding any fees that must be deposited in the Citywide Affordable Housing Fund (Administrative
12 Code Section 10.100-49), to a later date pursuant to Section 107A.13.3 of the Building Code.~~The~~
13 ~~project sponsor’s option to defer payment of the fee to a later date pursuant to Section 107A.13.3 of the~~
14 ~~Building Code expired on July 1, 2013 and is not available unless and until the Board of Supervisors~~
15 ~~re-authorizes this deferral option.~~

16 (e) **Amount and Applicability of Impact Fees.** When the Planning Department determines
17 that a project is subject to development impact fees established in the Planning Code, with the
18 exception of the Inclusionary Housing Fee as set forth in Section 415 et seq., the assessment shall be
19 based on the types of fees and the rates of those fees in effect at the time of Final Approval. After Final
20 Approval, the City shall not impose subsequently established development impact fees or increase the
21 rate of existing fees on the development project, including annual inflation adjustments pursuant to
22 Section 409, except as provided in subsection (e)(1)-(2) of this Section 402. The Planning Department
23 shall transmit the fee assessment to the Development Fee Collection Unit at DBI in accordance with
24 this Section 402.

1 (1) **Modification, Renewal, Extension for Projects.** After the Final Approval, if a
2 development project requires a modification to, renewal, or extension of a previously approved
3 Development Application, the Planning Department shall reassess development impact fees pursuant to
4 subsection (e)(2). For the purposes of this subsection (e)(1), a “modification” shall not include a
5 legislatively-authorized reduction in fees.

6 (2) **Amount of Reassessment.** For any development project that requires a
7 modification to, renewal, or extension pursuant to subsection (e)(1), the Planning Department shall
8 reassess fees as follows:

9 (A) **Modified Projects.** For projects increasing Gross Floor Area of any use,
10 the Planning Department shall assess the new or increased Gross Floor Area by applying the types of
11 impact fees in effect at the time of Final Approval at the rates in effect at the time of modification. For
12 projects reducing Gross Floor Area, the Planning Department shall assess the types and rates of fees in
13 effect at the time of Final Approval only on the remaining Gross Floor Area. If the modified project
14 would result in a new type of fee or a different rate based on applicable thresholds in effect at the time
15 of Final Approval, the entire project square footage is subject to the new type of fee or different rate in
16 effect at the time of modification. The City shall refund fees, if any, without interest, based on the fees
17 in effect at the time of Final Approval.

18 (B) **Renewal and Extended Projects.** For projects receiving a renewal or
19 extension, the Planning Department shall reassess fees for the entire project’s Gross Floor Area based
20 on the type of fees and rates of those fees in effect at the time of renewal or extension.

21 (3) **Projects Approved Prior to Effective Date of Ordinance in Board File No. _____.**
22 For projects that have obtained a Final Approval, but that have not yet obtained a first site or building
23 permit prior to the effective date of the ordinance in Board File No. _____, the assessed types and rates
24 of impact fees shall not be increased after that effective date, unless such project requires a
25 modification, extension, or renewal pursuant to subsection (e)(1)-(2) of this Section 402. For projects

1 that have obtained a Final Approval and a site or building permit prior to the effective date of the
2 ordinance in Board File No. _____, the types and rate of fees are those assessed at the time of site or
3 building permit issuance, unless such project requires a modification, extension, or renewal pursuant
4 to subsection (e)(1)-(2) of this Section 402.

5 (4) Applicability to Development Agreements.

6 (A) For projects subject to development agreements executed prior to the
7 effective date of the ordinance in Board File No. _____, the Planning Department shall assess the
8 applicable fees pursuant to the development agreement and no later than the earlier of site or building
9 permit issuance.

10 (B) Except as may otherwise be agreed to by the parties, for a project subject to
11 a development agreement executed on or after the effective date of the ordinance in Board File No.
12 _____, the Planning Department shall assess the applicable fees at the earlier of site or building permit
13 issuance.

14 (C) The procedures set forth in subsection (e)(1)-(2) shall govern the
15 modification, renewal, or extension of a project subject to a development agreement.

16 (D) In the event of a conflict between this Section 402(e) and the terms of a
17 development agreement, the terms of the development agreement shall apply, unless the development
18 agreement is modified pursuant to the terms of that agreement.

19
20 **SEC. 403. PAYMENT OF DEVELOPMENT FEE(S) OR SATISFACTION OF**
21 **DEVELOPMENT IMPACT REQUIREMENT(S) AS A CONDITION OF APPROVAL**
22 **~~PLANNING COMMISSION REVIEW; RECOMMENDATION CONCERNING~~**
23 **~~EFFECTIVENESS OF FEE DEFERRAL PROGRAM.~~**

24 ~~(a) Condition of Approval.~~ In addition to any other condition of approval that may
25 otherwise be applicable, the Department or Commission shall require as a condition of

1 approval of a development project subject to a development fee or development impact
2 requirement under this Article that such development fee or fees be paid prior to the issuance
3 of the first construction document for any building or buildings within the development project,
4 in proportion to the amount required for each building if there are multiple buildings, with an
5 option for the project sponsor to defer payment of 85 percent of the fees, or 80 percent of the
6 fees if the project is subject to a neighborhood infrastructure impact development fee, to prior
7 to issuance of the first certificate of occupancy ~~upon agreeing to pay a Development Fee Deferral~~
8 ~~Surcharge on the amount owed~~, as provided by Section 107A.13.3 of the San Francisco Building
9 Code ("Fee Deferral Program"). The Fee Deferral Program shall not apply to fees that must be
10 deposited in the Citywide Affordable Housing Fund (Administrative Code Section 10.100-49). Projects
11 subject to development agreements executed pursuant to Chapter 56 of the Administrative Code shall
12 be eligible for the Fee Deferral Program, except as may otherwise be agreed to by the parties to the
13 development agreement. The Department or Commission shall also require as a condition of
14 approval that any development impact requirement imposed on a development project under
15 this Article shall be satisfied prior to issuance of the first certificate of occupancy for any
16 building or buildings within the development project, in proportion to the amount required for
17 each building if there are multiple buildings.

18 ~~(b) Hearing to Review Effectiveness of Fee Deferral Program. Under 107A.13.3 of the San~~
19 ~~Francisco Building Code, the option to defer the payment of development fees expires on July 1, 2013~~
20 ~~unless the Board of Supervisors extends the Fee Deferral Program. Prior to the July 1, 2013 expiration~~
21 ~~date, the Planning Commission shall hold a public hearing to review the effectiveness of the Fee~~
22 ~~Deferral Program, the economy at large, and whether the simulative effects of the Fee Deferral~~
23 ~~Program are still necessary. Following the public hearing, the Commission shall forward a~~
24 ~~recommendation to the Board of Supervisors as to whether the Fee Deferral Program should be~~
25 ~~continued, modified, or terminated.~~

1
2 **SEC. 406. WAIVER, REDUCTION, OR ADJUSTMENT OF DEVELOPMENT**
3 **PROJECT REQUIREMENTS.**

4 * * * *

5 (g) **Waiver for Projects in PDR Districts.** In a PDR District, a development project that meets
6 the eligibility criteria in subsection (g)(1) of this Section 406 shall receive a waiver from any
7 development impact fee or development impact requirement imposed by this Article.

8 (1) **Eligibility.** To be eligible for the waiver in this subsection (g), the project shall:

9 (A) be located in a PDR District;

10 (B) contain a Retail Use or PDR Use and no residential uses;

11 (C) propose the new construction of at least 20,000 square feet of Gross Floor Area and
12 no more than 200,000 square feet of Gross Floor Area;

13 (D) be located on a vacant site or site improved with buildings with less than a 0.25 to 1
14 Floor Area Ratio as of the date a complete Development Application is submitted;

15 (E) submit a complete Development Application on or before December 31, 2026,
16 including any projects approved prior to the effective date of the ordinance in Board File No. _____
17 that have not already paid development impact fees.

18 (2) **Extent of Waiver.** The waiver in this subsection (g) shall be limited to development
19 impact fees or development impact requirements for the establishment of any new Gross Floor Area of
20 PDR or Retail Use.

21 (3) **Sunset.** This subsection (g) shall expire by operation of law on December 31, 2026,
22 unless the duration of the subsection has been extended by ordinance effective on or before that date.
23 Upon expiration, the City Attorney shall cause subsection (g) to be removed from the Planning Code.

1 (h) Waiver for Projects in the C-2 District. In the C-2 District, a development project that
2 meets the eligibility criteria in subsection (h)(1) of this Section 406 shall receive a waiver from any
3 development impact fee or development impact requirement imposed by this Article.

4 (1) Eligibility. To be eligible for the waiver in this subsection (h), the project shall:

5 (A) be located in a C-2 District;

6 (B) contain no residential uses;

7 (C) contain all of the following uses: Hotel, Restaurant, Bar, Outdoor Activity, and
8 Entertainment;

9 (D) propose the new construction of at least 20,000 square feet of Gross Floor Area and
10 no more than 200,000 square feet of Gross Floor Area;

11 (E) be located on a vacant site or site improved with buildings with less than a 0.25 to 1
12 Floor Area Ratio as of the date a complete Development Application is submitted;

13 (F) submit a complete Development Application on or before December 31, 2026,
14 including any projects approved prior to the effective date of the ordinance in Board File No. _____
15 that have not already paid development impact fees.

16 (2) Extent of Waiver. The waiver in this subsection (h) shall be limited to development
17 impact fees or development impact requirements for the establishment of any new Gross Floor Area of
18 the Hotel, Restaurant, Bar, Outdoor Activity, and Entertainment Use.

19 (3) Sunset. This subsection (h) shall expire by operation of law on December 31, 2026,
20 unless the duration of the subsection has been extended by ordinance effective on or before that date.
21 Upon expiration, the City Attorney shall cause subsection (h) to be removed from the Planning Code.

22
23 **SEC. 409. CITYWIDE DEVELOPMENT FEE REPORTING REQUIREMENTS AND**
24 **COST INFLATION FEE ADJUSTMENTS.**

25 * * * *

1 (b) **Annual Development Fee ~~Infrastructure Construction Cost~~ Inflation**

2 **Adjustments.** Prior to issuance of the Citywide Development Fee and Development Impact
3 Requirements Report referenced in subsection (a) above, the Controller shall review the
4 amount of each development fee established in the Planning Code and, with the exception of
5 the Inclusionary Affordable Housing Fee in Section 415 et seq., shall adjust the dollar amount
6 of any development fee by two percent on an annual basis every January 1 ~~based solely on the~~
7 ~~Annual Infrastructure Construction Cost Inflation Estimate. The Office of the City Administrator's~~
8 ~~Capital Planning Group shall publish the Annual Infrastructure Construction Cost Inflation Estimate,~~
9 ~~as approved by the City's Capital Planning Committee, no later than November 1 every year, without~~
10 ~~further action by the Board of Supervisors. The Annual Infrastructure Construction Cost Inflation~~
11 ~~Estimate shall be updated no later than November 1 every year, in order to establish maintain a~~
12 ~~reasonable estimate conservative connection between construction costs and development fees of~~
13 ~~construction cost inflation~~ for the next calendar year for a mix of public infrastructure and
14 facilities in San Francisco. ~~The Capital Planning Group may rely on past construction cost inflation~~
15 ~~data, market trends, and a variety of national, state, and local commercial and institutional~~
16 ~~construction cost inflation indices in developing its annual estimates for San Francisco.~~ The Planning
17 Department and the Development Fee Collection Unit at DBI shall provide notice of the
18 Controller's development fee adjustments, ~~including the Annual Infrastructure Construction Cost~~
19 ~~Inflation Estimate formula used to calculate the adjustment,~~ and MOHCD's separate adjustment of
20 the Inclusionary Affordable Housing Fee on the Planning Department and DBI websites and to
21 any interested party who has requested such notice at least 30 days prior to the adjustment
22 taking effect each January 1. The Inclusionary Affordable Housing Fee shall be adjusted
23 under the procedures established in Section 415.5(b)(3).

1 Section 4. The San Francisco Building Code is hereby amended by revising Section
2 107A.13, to read as follows:

3
4 **107A.13 Development impact and in-lieu fees.**

5 **107A.13.1 Definitions.**

6 (a) The following definitions shall govern interpretation of this Section:

7 * * * *

8 (10) **“Neighborhood Infrastructure Seed Fund”** shall mean the fund or funds
9 established by the Controller’s Office for the purpose of collecting the 20 percent pre-paid
10 portion of the development fees intended to fund pre-development work on any neighborhood
11 infrastructure project funded by any of the ~~six~~ neighborhood infrastructure impact development
12 fees listed in Subsection 107A.13.13.1. In addition, third-party grant monies or loans may also
13 be deposited into this fund for the purpose of funding pre-development or capital expenses to
14 accelerate the construction start times of any neighborhood infrastructure project funded by
15 any of the ~~six~~ neighborhood infrastructure impact development fees listed in Subsection
16 107A.13.13.1. 1

17
18 * * * *

19 **107A.13.2 Collection by Department.** The Department shall be responsible for
20 collecting all development impact and in-lieu fees, including (a) fees levied by the San
21 Francisco Unified School District if the District authorizes collection by the Department, and
22 (b) fees levied by the San Francisco Public Utilities Commission, if the Commission’s General
23 Manager authorizes collection by the Department, deferral of payment of any development
24 fee, and/or resolution of any development fee dispute or appeal in accordance with this
25 Section 107A.13.

1 **107A.13.3 Timing of development fee payments and satisfaction of development**
2 **impact requirements.**

3 (a) All development impact or in-lieu fees owed for a development project shall be
4 paid by the project sponsor prior to issuance of the first construction document; provided,
5 however, that the project sponsor may elect to defer payment of said fees under Section
6 107A.13.3.1.

7 (b) Any development impact requirement shall be completed prior to issuance of the
8 first certificate of occupancy for the development project.

9 **107A.13.3.1 Fee deferral program; ~~development fee deferral surcharge.~~** A project
10 sponsor may elect to defer payment of any development impact or in-lieu fee, excluding any
11 fees that must be deposited into the Citywide Affordable Housing Fund (Administrative Code Section
12 10.100-49), collected by the Department to a due date prior to issuance by the Department of
13 the first certificate of occupancy; provided, however, that the project sponsor shall pay 15
14 percent of the total amount of the development fees owed, excluding any fees that must be
15 deposited into the Citywide Affordable Housing Fund (Administrative Code Section 10.100-49), prior
16 to issuance of the first construction document. If a project is subject to one of the ~~six~~
17 neighborhood infrastructure impact development fees listed in Subsection 107A.13.3.1.1, the
18 project sponsor shall pay 20 percent of the total amount of the development fees owed prior to
19 issuance of the first construction document. These pre-paid funds shall be deposited as
20 provided in Subsection 107A.13.3.1.1 below. A project sponsor that has not obtained its First
21 Construction Document ~~received project approval~~ prior to ~~July 1, 2010~~ the Effective Date of the
22 ordinance in Board File No. _____ and has not yet paid a development impact or in-lieu fee may
23 elect to defer payment under the provisions of this Section notwithstanding a condition of
24 approval that required the fee to be paid prior to issuance of ~~a building or site permit~~ the First
25 Construction Document.

1 This option to defer payment may be exercised by ~~(1)~~ submitting a deferral request to
2 the Department on a form provided by the Department prior to issuance of the first
3 construction document, ~~and (2) agreeing to pay a Development Fee Deferral Surcharge~~. This
4 deferral option shall not be available to a project sponsor who paid the fee prior to the
5 ~~operative Effective Date of July 1, 2010~~ the ordinance in Board File No. _____; the project sponsor's
6 reapplication for a building or site permit after expiration of the original permit and refund of
7 the development fees paid shall not authorize the project sponsor to elect the deferral option.
8 ~~The deferral option shall expire on July 1, 2013 unless the Board of Supervisors extends it.~~

9 **107A.13.3.1.1 Deposit of pre-paid portion of deferred development fees.** If a
10 development project is not subject to one of the ~~six~~ neighborhood infrastructure impact fees
11 listed below, the pre-paid portion of the development fees shall be deposited into the
12 appropriate fee account. If there is more than one fee account, the pre-paid portion of the fees
13 shall be apportioned equally.

14 If a development project is subject to one of the ~~six~~ neighborhood infrastructure impact
15 development fees listed below, the entire 20 percent development fee pre-payment shall be
16 deposited in the appropriate neighborhood infrastructure impact fee account. These pre-paid
17 funds shall be dedicated solely to replenishing the Neighborhood Infrastructure Seed Fund for
18 that specific neighborhood infrastructure impact fee account. In no event shall a neighborhood
19 infrastructure impact fee specific to one Area Plan be mixed with neighborhood infrastructure
20 impact fees specific to a different Area Plan. If the 20 percent development fee pre-payment
21 exceeds the total amount owed for the neighborhood infrastructure impact fee account, the
22 remaining pre-paid portion of the 20 percent development fee pre-payment shall be
23 apportioned equally among the remaining applicable development fees.

24 The neighborhood infrastructure development fees subject to the 20 percent pre-
25 payment provision of this Subsection 107A.13.3.1.1 are as follows: (1) the Rincon Hill

1 Community Infrastructure Impact Fee, as set forth in Planning Code Section 418.3(b)(1); (2)
2 the Visitacion Valley Community Facilities and Infrastructure Fee, as set forth in Planning
3 Code Section 420.3(b); (3) the Market and Octavia Community Infrastructure Fee, as set forth
4 in Planning Code Section 421.3(b); (4) the Balboa Park Community Infrastructure Impact Fee,
5 as set forth in Planning Code Section 422.3(b); (5) the Eastern Neighborhoods Infrastructure
6 Impact Fee, as set forth in Planning Code Section 423.3(b); ~~and~~ (6) the Van Ness and Market
7 Neighborhood Infrastructure Impact Fee, as set forth in Planning Code Section 424.3(b)(ii);
8 and (7) the Central SoMa Infrastructure Impact Fee, as set forth in Planning Code Section 433.

9 **107A.13.3.2 Reserved.** ~~Payment of development fees; payment and calculation of Development~~
10 ~~Fee Deferral Surcharge. Except for any pre-paid fees, all deferred development fees remaining unpaid~~
11 ~~shall be paid in full prior to issuance of the first certificate of occupancy at the end of the deferral~~
12 ~~period. The Development Fee Deferral Surcharge shall be paid when the deferred fees are paid and~~
13 ~~shall accrue at the Development Fee Deferral Surcharge Rate.~~

14 ~~The Development Fee Deferral Surcharge Rate shall be calculated monthly by the Unit as a~~
15 ~~blended interest rate comprised of 50% of the Treasurer's yield on a standard two-year investment and~~
16 ~~50% of the latest updated Monthly Earned Income Yield Rate for the City and County of San~~
17 ~~Francisco's Pooled Funds, as posted on the San Francisco Treasurer's website and 50% of the Annual~~
18 ~~Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator's~~
19 ~~Capital Planning Group and approved by the City's Capital Planning Committee consistent with its~~
20 ~~obligations under Section 409(b) of the San Francisco Planning Code. The annual Infrastructure~~
21 ~~Construction Cost Inflation Estimate shall be updated by the Office of the City Administrator's Capital~~
22 ~~Planning Group on an annual basis, in consultation with the Capital Planning Committee, with the~~
23 ~~goal of establishing a reasonable estimate of construction cost inflation for the next calendar year for a~~
24 ~~mix of public infrastructure and facilities in San Francisco. The Capital Planning Group may rely on~~
25 ~~past construction cost inflation data, market trends, and a variety of national, state and local~~

1 ~~commercial and institutional construction cost inflation indices in developing their annual estimates for~~
2 ~~San Francisco. Commencing on the effective date of this ordinance, the Unit shall publish the~~
3 ~~Development Fee Deferral Surcharge on the Department of Building Inspection website at or near the~~
4 ~~beginning of each month. The accrual of any deferred development fees begins on the first day that a~~
5 ~~project sponsor elects to defer development fees, but never later than immediately after issuance of the~~
6 ~~first construction document. The Development Fee Collection Unit shall calculate the final~~
7 ~~Development Fee Deferral Surcharge for individual projects by multiplying the total development fees~~
8 ~~otherwise due prior to issuance of the construction document by the Development Fee Deferral~~
9 ~~Surcharge Rate by the actual day count of the entire Development Fee Deferral Period, which shall be~~
10 ~~the number of days between the project sponsor's election to defer to final payment of the deferred~~
11 ~~development fees. The Development Fee Deferral Surcharge shall be apportioned among all~~
12 ~~development fee funds according to the ratio of each development fee as a percentage of the total~~
13 ~~development fees owed on the specific project.~~

14 * * * *

15
16 Section 5. Article 4 of the Planning Code is hereby amended by revising Sections
17 401A, 411A.1, 411A.6, 412.1, 412.4, 413.1, 414.1, 414A.1, 418.1, 420.1, 421.1, 422.1, 423.1,
18 424.1, 424.6.1, 424.7.1, 430, 433.1, and 435.1, to read as follows:

19
20 **SEC. 401A. FINDINGS.**

21 (a) **General Findings.** The Board makes the following findings related to the fees
22 imposed under Article 4.

23 (1) **Application.** The California Mitigation Fee Act, Government Code Section
24 66000 et seq. may apply to some or all of the fees in this Article 4. While the Mitigation Fee
25 Act may not apply to all fees, the Board has determined that general compliance with its

1 provisions is good public policy in the adoption, imposition, collection, and reporting of fees
2 collected under this Article 4. By making findings required under the Act, including the findings
3 in this Subsection and findings supporting a reasonable relationship between new
4 development and the fees imposed under this Article 4, the Board does not make any finding
5 or determination as to whether the Mitigation Fee Act applies to all of the Article 4 fees.

6 (2) **Timing of Fee Collection.** For any of the fees in this Article 4 collected
7 prior to the issuance of the certificate of occupancy, the Board of Supervisors makes the
8 following findings set forth in California Government Code Section 66007(b): the Board of
9 Supervisors finds, based on information from the Planning Department in Board File No.
10 150149, that it is appropriate to require the payment of the fees in Article 4 at the time of
11 issuance of the first construction document because the fee will be collected for public
12 improvements or facilities for which an account has been established and funds appropriated
13 and for which the City has adopted a proposed construction schedule or plan prior to the final
14 inspection or issuance of the certificate of occupancy or because the fee is to reimburse the
15 City for expenditures previously made for such public improvements or facilities.

16 (3) **Administrative Fee.** The Board finds, based on information from the
17 Planning Department in Board File No. 150149, that the City agencies administering the fee
18 will incur costs equaling 5% or more of the total amount of fees collected in administering the
19 funds established in Article 4. Thus, the 5% administrative fee included in the fees in this
20 Article 4 do not exceed the cost of the City to administer the funds.

21 (b) **Specific Findings.** The Board of Supervisors has reviewed the San Francisco
22 Citywide Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”); and the San
23 Francisco Infrastructure Level of Service Analysis (“Level of Service Analysis”) ~~prepared by~~
24 ~~AECOM dated March 2014, and the Transportation Sustainability Fee Nexus Study (TSF Nexus Study),~~
25 ~~dated May, 2015, both~~ on file with the Clerk of the Board in Files Nos. _____ ~~150149 and~~

1 ~~150790~~, and adopts the findings and conclusions of those studies, specifically the sections of
2 those studies establishing levels of service for and a nexus between new development and
3 ~~five~~ four infrastructure categories: Recreation and Open Space, Childcare, ~~Streetscape and~~
4 ~~Pedestrian Infrastructure, Bicycle Infrastructure,~~ Complete Streets, and Transit Infrastructure. The
5 Board of Supervisors finds that, as required by California Government Code Section 66001,
6 for each infrastructure category analyzed, the Nexus Analysis and Infrastructure Level of
7 Service Analysis: identify the purpose of the fee; identify the use or uses to which the fees are
8 to be put, including a reasonable level of service; determine how there is a reasonable
9 relationship between the fee's use and the type of development project on which the fee is
10 imposed; determine how there is a reasonable relationship between the need for the public
11 facility and the type of development project on which the fee is imposed; and determine how
12 there is a reasonable relationship between the amount of the fee and the cost of the public
13 facility or portion of the facility attributable to the development. Specifically, as discussed in
14 more detail in and supported by the Nexus Analysis and Infrastructure Level of Service
15 Analysis the Board adopts the following findings:

16 (1) **Recreation and Open Space Findings.**

17 (A) **Purpose.** The fee will help maintain adequate park capacity required to
18 serve new service population resulting from new development.

19 (B) **Use.** The fee will be used to fund projects that directly increase park
20 capacity in response to demand created by new development. Park and recreation capacity
21 can be increased either through the acquisition of new park land, or through capacity
22 enhancements to existing parks and open space. Examples of how development impact fees
23 would be used include: acquisition of new park and recreation land; lighting improvements to
24 existing parks, which extend hours of operation on play fields and allow for greater capacity;
25 recreation center construction, or adding capacity to existing facilities; and converting passive

1 open space to active open space including but not limited to through the addition of trails, play
2 fields, and playgrounds.

3 (C) **Reasonable Relationship.** As new development adds more employment
4 and/or residents to San Francisco, it will increase the demand for park facilities and park
5 capacity. Fee revenue will be used to fund the acquisition and additional capacity of these
6 park facilities. Each new development project will add to the incremental need for recreation
7 and open space facilities described above. Improvements considered in the Nexus Study are
8 estimated to be necessary to maintain the City's effective service standard.

9 (D) **Proportionality.** The new facilities and costs allocated to new development
10 are based on the existing ratio of the City's service population to acres of existing recreation and
11 open space ~~a conservative estimate of its current recreation and open space capital expenditure to~~
12 ~~date~~. The scale of the capital facilities and associated costs are proportional to the projected
13 levels of new development and the existing relationship between service population and
14 recreation and open space ~~infrastructure~~. The cost of the deferred maintenance required to
15 address any operational shortfall within the City's recreation and open space provision will not
16 be financed by development fees.

17 (2) **Childcare Findings.**

18 (A) **Purpose.** The fee will support the provision of childcare facility needs
19 resulting from an increase in San Francisco's residential and employment population.

20 (B) **Use.** The childcare impact fee will be used to fund capital projects related
21 to infant, toddler, and preschool-age childcare. Funds will pay for the expansion of childcare
22 slots for infant, toddler, and preschool children.

23 (C) **Reasonable Relationship.** New residential and commercial development in
24 San Francisco will increase the demand for infant, toddler and preschool-age childcare. Fee
25 revenue will be used to fund the capital investment needed for these childcare facilities.

1 Residential developments will result in an increase in the residential population, which results
2 in growth in the number of children requiring childcare. Commercial development results in an
3 increase of the employee population, which similarly require childcare near their place of
4 work. Improvements considered in this study are estimated to be necessary to maintain the
5 City's provision of childcare at its effective service standard.

6 (D) **Proportionality.** The ~~new facilities and~~ costs allocated to new development
7 are based on estimated childcare demand generated by future development. ~~existing service ratio of~~
8 ~~the total number of infants, toddler, and preschoolers needing care in San Francisco to the number of~~
9 ~~spaces available to serve them. The total numbers of children reflect both resident children and non-~~
10 ~~resident children of San Francisco employees needing care.~~ Capital costs required to provide these
11 childcare spaces to accommodate the new population are based on the City's cost of funding new
12 childcare facilities and assigned to new housing units and new non-residential development on a per-
13 square-foot basis. The scale of the capital facilities and associated costs are directly
14 proportional to the expected levels of new development and the corresponding increase in
15 childcare demands.

16 (3) Complete Streets Streetscape and Pedestrian Infrastructure Findings. ~~The~~
17 ~~infrastructure covered by Pedestrian and Bicycle Infrastructure and Bicycle Infrastructure may be~~
18 ~~referred to in certain Area Plans collectively as "Complete Streets Infrastructure."~~

19 (A) **Purpose.** "Complete Streets" encompass sidewalk improvements, such as
20 lighting, landscaping, and safety measures, and sustainable street elements more broadly, including
21 bike lanes, sidewalk paving and gutters, lighting, street trees and other landscaping, bulb-outs, and
22 curb ramps. The primary purpose of the Complete Streets streetscape and pedestrian infrastructure
23 ~~development~~ impact fee is to fund capital investments in bicycle, streetscape, and pedestrian
24 infrastructure to accommodate the growth in street activity.

1 (B) **Use.** The ~~streetscape infrastructure~~ Complete Streets fees will be used to
2 implement the Better Streets Plan (2010), on file in Board File No. _____, including enhancement of
3 the pedestrian network in the areas surrounding new development – whether through
4 sidewalk improvements, construction of complete streets, or pedestrian safety improvements
5 – and development of new premium bike lanes, upgraded intersections, additional bicycle parking, and
6 new bicycle sharing program stations.

7 (C) **Reasonable Relationship.** New residential and non-residential development
8 brings an increased demand for new or expanded and improved Complete Streets infrastructure. This
9 relationship between new development, an influx of residents and workers, and a demand for complete
10 streets infrastructure provides the nexus for an impact fee. Complete Streets impact fees, imposed on
11 new development, fund the construction of new and enhanced complete streets infrastructure for the
12 additional residents and workers directly attributable to new development. ~~New development in San~~
13 ~~Francisco will increase the burden on the City's pedestrian infrastructure. Fee revenue will be used to~~
14 ~~increase pedestrian infrastructure capacity and facilities. Residential and commercial development will~~
15 ~~add to the incremental need for streetscape and pedestrian infrastructure. Improvements considered in~~
16 ~~this study are estimated to be necessary to maintain the City's effective service standard, reflecting the~~
17 ~~City's investment to date.~~

18 (D) **Proportionality.** The fees allocated to new development are based on the
19 existing ratio of the City's service population to a conservative estimate of its current
20 ~~streetscape and pedestrian~~ Complete Streets infrastructure provision to date – in the form of
21 square feet of Complete Streets sidewalk per thousand service population units. The costs
22 associated with this level of improvement are drawn from the cost per square foot associated
23 with ~~improving sidewalk under the Department of Public Works' standard repaving and bulbouts cost~~
24 ~~structure~~ constructing Complete Streets elements based on data from the San Francisco Planning
25 Department, Department of Public Works, Public Utilities Commission, and Municipal Transportation

1 Agency. Due to the locational variation in the cost of building Complete Street elements, the fee
2 calculation includes a 20 percent markup for the downtown area. The scale of the capital facilities
3 and associated costs are directly proportional to the expected levels of new development and
4 the existing relationship between service population and ~~pedestrian~~ Complete Streets
5 infrastructure. The cost of the deferred maintenance required to address any operational
6 shortfall is not allocated to be funded by new development.

7 ~~—(4) Bicycle Infrastructure Findings. The infrastructure covered by Pedestrian and Bicycle~~
8 ~~Infrastructure and Bicycle Infrastructure may be referred to in certain Area Plans collectively as~~
9 ~~"Complete Streets Infrastructure."~~

10 ~~—(A) Purpose. The primary purpose of bicycle infrastructure development impact fee is to~~
11 ~~fund capital improvements to San Francisco's bicycle infrastructure.~~

12 ~~—(B) Use. The bicycle fee will be used to implement the SFMTA's Bicycle Plan set forth in~~
13 ~~the 2013 Bicycle Strategy. The fee will support development of new premium bike lanes, upgraded~~
14 ~~intersections, additional bicycle parking, and new bicycle sharing program stations.~~

15 ~~—(C) Reasonable Relationship. New residential and commercial development in San~~
16 ~~Francisco will increase trips in San Francisco, of which a share will travel by bicycle. Fee revenue will~~
17 ~~be used to fund the capital investment needed for these bicycle facilities. Both residential and~~
18 ~~commercial developments result in an increased need for bicycle infrastructure, as residents and~~
19 ~~employees rely on bicycle infrastructure for transportation, and to alleviate strain on other~~
20 ~~transportation modes.~~

21 ~~—(D) Proportionality. The facilities and costs allocated to new development are based on~~
22 ~~the proportional distribution of the Bicycle Plan Plus investments between existing and new service~~
23 ~~population units. The scale of the capital facilities and associated costs are directly proportional to the~~
24 ~~expected levels of new development and the existing relationship between service population and~~
25 ~~bicycle facility demands.~~

1 ~~(54)~~ **Transit Infrastructure Findings.** ~~See Section 411A.~~

2 (A) **Purpose.** Transit Infrastructure funds will be used to meet the demand for transit capital
3 maintenance, transit capital facilities and fleet, and pedestrian and bicycle infrastructure generated by
4 new development in the City.

5 (B) **Use.** Transit Infrastructure fees will fund transit capital maintenance and transit capital
6 facilities to maintain the existing level of service. Revenues for capital maintenance operating costs will
7 improve vehicle reliability to expand transit services. Revenues for capital facilities will be used for
8 transit fleet expansion, improvements to increase SFMTA transit speed and reliability, and
9 improvements to regional transit operators. Though the fees are calculated based on transit
10 maintenance and facilities, fee revenues may be used for pedestrian and bicycle improvements to
11 complement revenue from the Complete Streets fee, including Area Plan complete street fees.

12 (C) **Reasonable Relationship.** The Transit Infrastructure fee is reasonably related to the
13 financial burden that development projects impose on the City. As development generates new trips, the
14 SFMTA must increase the supply of transit services and therefore capital maintenance expenditures to
15 maintain the existing transit level of service. Development also increases the need for expanded transit
16 facilities due to increased transit and auto trips.

17 (D) **Proportionality.** The existing level of service for transit capital maintenance is based on
18 the current ratio of the supply of transit services (measured by transit revenue service hours) to the
19 level of transportation demand (measured by number of automobile plus transit trips). The fair share
20 cost of planned transit capital facilities is allocated to new development based on trip generation from
21 new development as a percent of total trip generation served by the planned facility, including existing
22 development. The variance in the fee by economic activity category based on trip generation, and the
23 scaling of the fee based on the size of the development project, supports proportionality between the
24 amount of the fee and the share of transit capital maintenance and facilities attributable to each
25 development project.

1 (65) **Additional Findings.** The Board finds that the Nexus Analyses and Level of
2 Service Analysis establish that the fees are less than the cost of mitigation and do not include
3 the costs of remedying any existing deficiencies. The City may fund the cost of remedying
4 existing deficiencies through other public and private funds. The Board also finds that the
5 Nexus Analyses and Level of Service Analysis establish that the fees do not duplicate other City
6 requirements or fees. The Board further finds that there is no duplication in fees applicable on a
7 Citywide basis and fees applicable within an Area Plan. Moreover, the Board finds that these fees
8 are only one part of the City's broader funding strategy to address these issues. Residential
9 and non-residential impact fees are only one of many revenue sources necessary to address
10 the City's infrastructure needs.

11
12 **SEC. 411A.1. FINDINGS.**

13 * * * *

14 ~~(i) Based on the above findings and the TSF Nexus Study, the City determines that the TSF~~
15 ~~satisfies the requirements of California Government Code Section 66001 et seq. ("the Mitigation Fee~~
16 ~~Act"), as follows:~~

17 ~~— (1) The purpose of the TSF is to help meet the demands imposed on the City's~~
18 ~~transportation system by new Development Projects.~~

19 ~~— (2) Funds from collection of the TSF will be used to meet the demand for transit capital~~
20 ~~maintenance, transit capital facilities and fleet, and pedestrian and bicycle infrastructure generated by~~
21 ~~new development in the City.~~

22 ~~— (3) There is a reasonable relationship between the proposed uses of the TSF and the~~
23 ~~impacts of Development Projects subject to the TSF on the transportation system in the City.~~

24 ~~— (4) There is a reasonable relationship between the types of Development Projects on which~~
25 ~~the TSF will be imposed and the need to fund transportation system improvements.~~

1 — ~~(5) There is a reasonable relationship between the amount of the TSF to be imposed on~~
2 ~~Development Projects and the impact on transit resulting from such projects.~~

3 (i) More recently, the City adopted the San Francisco Citywide Nexus Analysis (“Nexus
4 Analysis”) and the San Francisco Infrastructure Level of Service Analysis, both on file with the Clerk
5 of the Board in File No. _____ . The Nexus Analysis evaluated the TSF, in addition to other
6 transportation impact fees. In Section 401A, the Board adopted the findings and conclusions of those
7 studies and the general and specific findings in that Section, specifically including the Transit
8 Infrastructure Findings, and incorporates those by reference herein to support the imposition of the
9 fees under this Section.

10
11 **SEC. 411A.6. TSF EXPENDITURE PROGRAM.**

12 As set forth in the ~~TSF-Nexus Study Analysis~~, on file with the Clerk of the Board of
13 Supervisors File No. ~~150790~~ _____, ~~T~~TSF funds may only be used to reduce the burden
14 imposed by Development Projects on the City's transportation system. Expenditures shall be
15 allocated as follows, giving priority to specific projects identified in the different Area Plans:

16 * * * *

17
18 **SEC. 412.1. PURPOSE AND FINDINGS SUPPORTING DOWNTOWN PARK FEE.**

19 * * * *

20 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
21 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
22 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014~~, both
23 on file with the Clerk of the Board in File No. ~~150149~~ _____ and, under Section 401A,
24 adopts the findings and conclusions of those studies and the general and specific findings in
25

1 that Section, specifically including the Recreation and Open Space Findings, and incorporates
2 those by reference herein to support the imposition of the fees under this Section.

3
4 **SEC. 412.4. IMPOSITION OF DOWNTOWN PARK FEE REQUIREMENT.**

5 * * * *

6 (b) **Amount of Fee.** The amount of the fee shall be \$2 per square foot (~~this fee amount~~
7 ~~is increased annually per the Consumer Price Index and the currently applicable fee is listed in the Fee~~
8 ~~Register~~) of the Net Addition of Gross Floor Area of Office Use to be constructed as set forth in
9 the final approved building or site permit.

10 * * * *

11
12 **SEC. 413.1. FINDINGS.**

13 * * * *

14 (h) The Board of Supervisors has reviewed the Jobs Housing Nexus Analysis ~~prepared~~
15 ~~by Keyser Marsten Associates, Inc., dated May 2019~~ (“Jobs Housing Nexus Analysis”), which is on
16 file with the Clerk of the Board in Board File No. 190548, and adopts the findings and
17 conclusions of that study, and incorporates the findings by reference herein to support the
18 imposition of the fees under Section 413.1 et seq.

19
20 **SEC. 414.1. PURPOSE AND FINDINGS SUPPORTING CHILDCARE**
21 **REQUIREMENTS FOR OFFICE AND HOTEL DEVELOPMENT PROJECTS.**

22 * * * *

23 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
24 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
25 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014~~, both

1 on file with the Clerk of the Board in File No. _____~~150149~~ and, under Section 401A, adopts
2 the findings and conclusions of those studies and the general and specific findings in that
3 Section, specifically including the Childcare Findings, and incorporates those by reference
4 herein to support the imposition of the fees under this Section.

5
6 **SEC. 414A.1. PURPOSE AND FINDINGS.**

7 * * * *

8 (b) **Findings.** ~~In adopting Ordinance No. 50-15, the~~ Board of Supervisors reviewed the
9 San Francisco Citywide Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus
10 Analysis”), and the San Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM~~
11 ~~dated March 2014~~, both on file with the Clerk of the Board of Supervisors in File No.
12 ~~150149~~ _____. The Board of Supervisors reaffirms the findings and conclusions of those
13 studies as they relate to the impact of residential development on childcare and hereby
14 readopts ~~the findings contained in Ordinance 50-15, including~~ the General Findings in Section
15 401A(a) of the Planning Code and the Specific Findings in Section 401A(b) of the Planning
16 Code relating to childcare.

17
18 **SEC. 418.1. PURPOSE AND FINDINGS SUPPORTING RINCON HILL COMMUNITY**
19 **IMPROVEMENTS FUND AND SOMA COMMUNITY STABILIZATION FUND.**

20 * * * *

21 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
22 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
23 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014~~, both
24 on file with the Clerk of the Board in File No. ~~150149~~ _____ and, under Section 401A,
25 adopts the findings and conclusions of those studies and the general and specific findings in

1 that Section, specifically including the Recreation and Open Space Findings and Complete
2 Streets findings, ~~Pedestrian and Streetscape Findings, and Bicycle Infrastructure Findings~~ and
3 incorporates those by reference herein to support the imposition of the fees under this
4 Section.

5 The Board takes legislative notice of the findings supporting the fees in former Planning
6 Code Section 418.1 (formerly Section 318.1) and the materials associated with Ordinance No.
7 217-05 in Board File No. 050865. To the extent that the Board previously adopted fees in this
8 Area Plan that are not covered in the analysis of the four infrastructure areas analyzed in the
9 Nexus Analysis, including but not limited to fees related to transit, the Board continues to rely
10 on its prior analysis and the findings it made in support of those fees.

11 * * * *

12
13 **SEC. 420.1. PURPOSE AND FINDINGS SUPPORTING VISITACION VALLEY**
14 **COMMUNITY IMPROVEMENTS FEE AND FUND.**

15 * * * *

16 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
17 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
18 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014~~, both
19 on file with the Clerk of the Board in File No. ~~150149~~ _____ and, under Section 401A, adopts
20 the findings and conclusions of those studies and the general and specific findings in that
21 Section, specifically including the Recreation and Open Space Findings, ~~Pedestrian and~~
22 ~~Streetscape~~ Complete Streets Findings, and Childcare Findings, ~~and Bicycle Infrastructure Findings~~
23 and incorporates those by reference herein to support the imposition of the fees under this
24 Section.

1 The Board takes legislative notice of the findings supporting these fees in former
2 Planning Code Section 420.1 (formerly Section 318.10 et seq.) and the materials associated
3 with Ordinance No. 3-11 in Board File No. 101247. To the extent that the Board previously
4 adopted fees in this Area Plan that are not covered in the analysis of the four infrastructure
5 areas analyzed in the Nexus Analysis, including but not limited to fees related to transit, the
6 Board continues to rely on its prior analysis and the findings it made in support of those fees.

7
8 **SEC. 421.1. PURPOSE AND FINDINGS SUPPORTING THE MARKET AND**
9 **OCTAVIA COMMUNITY IMPROVEMENTS FUND.**

10 * * * *

11 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
12 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
13 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014, and~~
14 ~~the Transportation Sustainability Fee Nexus Study (TSF Nexus Study), dated May, 2015, both~~ on file
15 with the Clerk of the Board in Files Nos. _____ ~~150149 and 150790~~, and, under Section
16 401A, adopts the findings and conclusions of those studies and the general and specific
17 findings in that Section, specifically including the Recreation and Open Space Findings,
18 ~~Pedestrian and Streetscape~~ Complete Streets Findings, Childcare Findings, ~~Bicycle Infrastructure~~
19 ~~Findings~~, and Transit Infrastructure Findings, and incorporates those by reference herein to
20 support the imposition of the fees under this Section.

21
22 **SEC. 422.1. PURPOSE AND FINDINGS IN SUPPORT OF BALBOA PARK**
23 **COMMUNITY IMPROVEMENTS FUND.**

24 * * * *

1 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
2 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
3 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014, and~~
4 ~~the Transportation Sustainability Fee Nexus Study (TSF Nexus Study), dated May, 2015, both~~ on file
5 with the Clerk of the Board in Files Nos. _____ ~~150149 and 150790~~, and, under Section
6 401A, adopts the findings and conclusions of those studies and the general and specific
7 findings in that Section, specifically including the Recreation and Open Space Findings,
8 ~~Pedestrian and Streetscape~~ Complete Streets Findings, Childcare Findings, ~~Bicycle Infrastructure~~
9 ~~Findings~~, and Transit Infrastructure Findings, and incorporates those by reference herein to
10 support the imposition of the fees under this Section.

11
12 **SEC. 423.1. PURPOSE AND FINDINGS SUPPORTING EASTERN**
13 **NEIGHBORHOODS IMPACT FEES AND COMMUNITY IMPROVEMENTS FUND.**

14 * * * *

15 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
16 Nexus Analysis ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San
17 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014, and~~
18 ~~the Transportation Sustainability Fee Nexus Study (TSF Nexus Study), dated May, 2015, both~~ on file
19 with the Clerk of the Board in Files Nos. _____ ~~150149 and 150790~~, and, under Section
20 401A, adopts the findings and conclusions of those studies and the general and specific
21 findings in that Section, specifically including the Recreation and Open Space Findings,
22 ~~Pedestrian and Streetscape~~ Complete Streets Findings, Childcare Findings, ~~Bicycle Infrastructure~~
23 ~~Findings~~, and Transit Infrastructure Findings, and incorporates those by reference herein to
24 support the imposition of the fees under this Section.

1 **SEC. 424.1. FINDINGS SUPPORTING THE VAN NESS & MARKET AFFORDABLE**
2 **HOUSING AND NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM**

3 * * * *

4 (b) **Neighborhood Infrastructure.** The Van Ness & Market Residential SUD enables
5 the creation of a very dense residential neighborhood in an area built for back-office and
6 industrial uses. Projects that seek the FAR bonus above the maximum cap would introduce a
7 very high localized density in an area generally devoid of necessary public infrastructure and
8 amenities, as described in the Market and Octavia Area Plan. While envisioned in the Plan,
9 such projects would create localized levels of demand for open space, streetscape
10 improvements, and public transit above and beyond the levels both existing in the area today
11 and funded by the Market and Octavia Community Improvements Fee. Such projects also
12 entail construction of relatively taller or bulkier structures in a concentrated area, increasing
13 the need for offsetting open space for relief from the physical presence of larger buildings.
14 Additionally, the FAR bonus provisions herein are intended to provide an economic incentive
15 for project sponsors to provide public infrastructure and amenities that improve the quality of
16 life in the area. The bonus allowance is calibrated based on the cost of responding to the
17 intensified demand for public infrastructure generated by increased densities available
18 through the FAR density bonus program.

19 The Board of Supervisors has reviewed the San Francisco Citywide Nexus Analysis
20 ~~prepared by AECOM dated March 2014~~ (“Nexus Analysis”), and the San Francisco Infrastructure
21 Level of Service Analysis ~~prepared by AECOM dated March 2014, and the Transportation~~
22 ~~Sustainability Fee Nexus Study (TSF Nexus Study), dated May, 2015, both~~ on file with the Clerk of
23 the Board in Files Nos. _____ ~~150149 and 150790~~, and, under Section 401A, adopts the
24 findings and conclusions of those studies and the general and specific findings in that Section,
25 specifically including the Recreation and Open Space Findings, ~~Pedestrian and Streetscape~~

1 Complete Streets Findings, Childcare Findings, ~~Bicycle Infrastructure Findings~~, and Transit
2 Infrastructure Findings, and incorporates those by reference herein to support the imposition of
3 the fees under this Section.

4

5 **SEC. 424.6.1. FINDINGS.**

6 (a) **General.** Existing public park and recreational facilities located in the downtown
7 area are at or approaching capacity utilization by the population of the area. There is
8 substantial additional population density, both employment and residential, planned and
9 projected in the Transit Center District. This district, more than other parts of the downtown, is
10 lacking in existing public open space amenities to support population growth. The need for
11 additional public park and recreation facilities in the downtown area, and specifically in the
12 Transit Center District, will increase as the population increases due to continued office, retail,
13 institutional, and residential development. Additional population will strain and require
14 improvement of existing open spaces both downtown and citywide, and will necessitate the
15 acquisition and development of new public open spaces in the immediate vicinity of the
16 growth areas. While the open space requirements imposed on individual commercial
17 developments address the need for plazas and other local outdoor sitting areas to serve
18 employees and visitors in the districts, and requirements imposed on individual residential
19 developments address the need for small-scale private balconies, terraces, courtyards or
20 other minor common space such as can be accommodated on individual lots, such open
21 space cannot provide the same recreational opportunities as a public park. In order to provide
22 the City and County of San Francisco with the financial resources to acquire and develop
23 public park and recreation facilities necessary to serve the burgeoning population in the
24 downtown area, a Transit Center District Open Space Fund shall be established as set forth
25 herein. The Board of Supervisors adopts the findings of the ~~Downtown Open Space Nexus Study~~

1 the San Francisco Citywide Nexus Analysis (“Nexus Analysis”), on file with the Clerk of the Board in
2 File No. _____, in accordance with the California Mitigation Fee Act, Government Code
3 Section 66001(a) ~~on file with the Clerk of the Board in File No. _____~~.

4 (b) **Transit Center District Open Space Impact Fee.** Development impact fees are
5 an effective approach to mitigate impacts associated with growth in population. The proposed
6 Transit Center District Open Space Impact Fee shall be dedicated to fund public open space
7 improvements in the Transit Center District Plan Area and adjacent downtown areas that will
8 provide direct benefits to the property developed by those who pay into the fund, by providing
9 necessary open space improvements needed to serve new development.

10 The Planning Department has calculated the fee rate using accepted professional
11 methods for calculating such fees. The calculations are described fully in the Nexus Analysis,
12 ~~Downtown Open Space Nexus Study, San Francisco Planning Department, Case No. 2007.0558U~~ on
13 file with the Clerk of the Board in File No. _____.

14 The proposed fee, in combination with the Downtown Park Fee established in Section
15 412 et seq., ~~is less than the maximum justified fee amount as calculated by the Downtown Open Space~~
16 ~~Nexus Study~~ is supported by the Nexus Analysis. While no project sponsor would be required to
17 pay more than the maximum amount justified for that project as calculated in the Nexus
18 Study, the Transit Center District Open Space Fee is tiered such that denser projects are
19 assessed higher fees because it is economically feasible for such projects to pay a higher
20 proportion of the maximum justified amount. The proposed fee covers impacts caused by new
21 development only and is not intended to remedy existing deficiencies. The cost to remedy
22 existing deficiencies will be paid for by public, community, and other private sources as
23 described in the ~~Downtown Open Space Nexus Study~~ Nexus Analysis and the Transit Center
24 District Plan Program Implementation Document. Impact fees are only one of many revenue
25 sources funding open space in the Plan Area.

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SEC. 424.7.1. FINDINGS.

(a) **General.** New development in the Transit Center District Plan area will create substantial new burdens on existing streets and transportation systems and require the need for new and enhanced transportation services and improvements to rights-of-way for all modes of transportation. The downtown is a very dense urban environment with limited roadway capacity and is already substantially congested and impacted by existing patterns of movement. To accommodate the substantial growth anticipated in the Transit Center District Plan Area, public transit investments must be made, circulation patterns adjusted, and limited right-of-way space reallocated such that trips to and through the area are primarily made by public transit, walking, bicycling, and carpooling and such that these modes are enabled to maintain or improve efficiency and attractiveness in the face of increasing traffic congestion. The Transit Center District Plan identified necessary investments and improvements to achieve these modal objectives and ensure that growth in trips resulting from new development and population increase in the Plan area does not degrade existing services. The San Francisco Citywide Nexus Analysis (“Nexus Analysis”), ~~Transit Center District Plan Transportation Nexus Study, San Francisco Planning Department Case No. 2007.0558U~~ on file with the Clerk of the Board in File No. _____, calculated the proportional share of the cost of these improvements attributable to new growth based on accepted professional standards. The investments and improvements identified in the Transit Center District Plan and allocated in the nexus study are distinct and in addition to improvements and services related to the Transit Impact Development Fee (TIDF) imposed by Section 411 et seq. Whereas the TIDF funds improvements to SFMTA Municipal Railway public transit services and facilities to provide sufficient capacity required to serve new development, the Transit Center District Transportation and Street Improvement Fee covers impacts of new development in the

1 District on regional transit services and facilities that are distinct from and in addition to the
2 need for SFMTA public transit services, and that will not funded by the TIDF, including
3 necessary improvements to area streets to facilitate increases in all modes of transportation
4 due to development, including walking, bicycling, and carpooling, and to regional transit
5 facilities, including the Downtown Rail Extension and downtown BART stations. The Board
6 finds that there is no duplication in these two fees. To provide the City and County of San
7 Francisco and regional transit agencies with the financial resources to provide transportation
8 facilities and street improvements necessary to serve the burgeoning population of downtown
9 San Francisco, a Transit Center District Transportation and Street Improvement Fund shall be
10 established as set forth herein. The Board of Supervisors adopts the findings of the ~~Downtown~~
11 ~~Open Space Nexus Study~~ Nexus Analysis, in accordance with the California Mitigation Fee Act,
12 Government Code Section 66001(a) ~~on file with the Clerk of the Board in File No. _____~~.

13 (b) **Transit Center District Transportation and Street Improvement Impact Fee.**

14 Development impact fees are an effective approach to mitigate impacts associated with
15 growth in population. The proposed Transit Center District Transportation and Street
16 Improvement Impact Fee shall be dedicated to public transportation and public street
17 improvements in the Transit Center District Plan Area and adjacent downtown areas that will
18 provide direct benefits to the property developed by those who pay into the fund, by providing
19 necessary transportation and street improvements needed to serve new development.

20 The fee rate has been calculated by the Planning Department based on accepted
21 professional methods for the calculation of such fees, and described fully in the Nexus Analysis,
22 ~~Transit Center District Transportation and Street Improvement Nexus Study. San Francisco Planning~~
23 ~~Department. Case No. 2007.0558U~~ on file with the Clerk of the Board in File No. _____.

24 The proposed fee established in Sections 424.7 et seq., is less than the maximum
25 justified fee amount as calculated by the ~~Transit Center District Transportation and Street~~

1 ~~Improvement Nexus Study~~ Nexus Analysis necessary to provide transportation and street
2 improvements to increasing population in the area. While no project sponsor would be
3 required to pay more than the maximum amount justified for that project as calculated in the
4 Nexus Study, the Transit Center District Transportation and Street Improvement Fee is tiered
5 such that denser projects are assessed higher fees because it is economically feasible for
6 such projects to pay a higher proportion of the maximum justified amount. The proposed fee
7 covers only the demand for transportation and street improvements created by new
8 development and is not intended to remedy existing deficiencies. The cost to remedy existing
9 deficiencies will be paid for by public, community, and other private sources as described in
10 the ~~Transit Center District Transportation and Street Improvement Nexus Study~~ Nexus Analysis and
11 the Transit Center District Plan Implementation Document. Impact fees are only one of many
12 revenue sources necessary to provide transportation and street improvements in the Plan
13 Area.

14

15 **SEC. 430. BICYCLE PARKING IN LIEU FEE.**

16 * * * *

17 (b) **Amount of Fee.** The amount of the in lieu fee shall be \$400 per Class 2 bicycle
18 parking space. This fee shall be adjusted pursuant to Sections 409 ~~and 410~~ of this Code.

19 * * * *

20

21 **SEC. 433.1. PURPOSE-AND FINDINGS.**

22 * * * *

23 (b) **Findings.** The Board of Supervisors has reviewed the San Francisco Citywide
24 Nexus Analysis ~~prepared by AECOM dated March 2014~~ ("Nexus Analysis"), and the San
25 Francisco Infrastructure Level of Service Analysis ~~prepared by AECOM dated March 2014, and~~

1 ~~the Transportation Sustainability Fee Nexus Study (TSF Nexus Study), dated May, 2015, both~~ on file
2 with the Clerk of the Board in Files Nos. _____ ~~150149 and 150790,~~ and, under Section
3 401A, adopts the findings and conclusions of those studies and the general and specific
4 findings in that Section, specifically including the Recreation and Open Space Findings,
5 ~~Pedestrian and Streetscape~~ Complete Streets Findings, Childcare Findings, ~~Bicycle Infrastructure~~
6 ~~Findings,~~ and Transit Infrastructure Findings, and incorporates those by reference herein to
7 support the imposition of the fees under this Section.

8
9 **SEC. 435.1 PURPOSE-AND FINDINGS SUPPORTING UNION SQUARE PARK,**
10 **RECREATION, AND OPEN SPACE FEE.**

11 * * * *

12 (b) **Findings.** The Board of Supervisors has reviewed the ~~Downtown San Francisco~~
13 ~~Park, Recreation, and Open Space Development Impact Fee Nexus Study, prepared by Hausrath dated~~
14 ~~April 13, 2012~~ San Francisco Citywide Nexus Analysis (“Nexus Study Analysis”), on file with the
15 Clerk of the Board of Supervisors in File No. _____ ~~180916.~~ In accordance with the California
16 Mitigation Fee Act, Government Code Section 66001(a), the Board of Supervisors adopts the
17 findings and conclusions of that study, and incorporates those findings and conclusions by
18 reference to support the imposition of the fees under this Section.

19
20 Section 6. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor’s veto of the ordinance.

1 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

7
8 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word
9 of this ordinance, or any application thereof to any person or circumstance, is held to be
10 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
11 shall not affect the validity of the remaining portions or applications of the ordinance. The
12 Board of Supervisors hereby declares that it would have passed this ordinance and each and
13 every section, subsection, sentence, clause, phrase, and word not declared invalid or
14 unconstitutional without regard to whether any other portion of this ordinance or application
15 thereof would be subsequently declared invalid or unconstitutional.

16
17 Section 9. No Conflict with Federal or State Law. Nothing in this ordinance shall be
18 interpreted or applied so as to create any requirement, power, or duty in conflict with any
19 federal or state law.

20
21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/ Giulia Gualco-Nelson
24 GIULIA GUALCO-NELSON
Deputy City Attorney

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LEGISLATIVE DIGEST

[Planning, Building Codes - Development Impact Fee Indexing, Deferral, and Waivers;
Adoption of Nexus Study]

Ordinance amending the Planning Code to 1) modify the annual indexing of certain development impact fees, with the exception of inclusionary housing fees; 2) provide that the type and rates of applicable development impact fees, with the exception of inclusionary housing fees, shall be determined at the time of project approval; 3) exempt eligible development projects in PDR (Production, Distribution, and Repair) Districts and the C-2 (Community Business) District from all development impact fees for a three-year period; 4) allow payment of development impact fees, with the exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the first certificate of occupancy; and 5) adopt the San Francisco Citywide Nexus Analysis supporting existing development impact fees for recreation and open space, childcare facilities, complete streets, and transit infrastructure and making conforming revisions to Article 4 of the Planning Code; amending the Building Code to allow payment of development impact fees, with the exception of fees deposited in the Citywide Affordable Housing Fund, to be deferred until issuance of the first certificate of occupancy and repealing the fee deferral surcharge; affirming the Planning Department’s determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare pursuant to Planning Code, Section 302.

Existing Law

The Mitigation Fee Act (California Government Code Section 66000 et seq.) requires that public agencies make certain findings to support the imposition of development impact fees. Article 4 of the Planning Code contains the City’s development impact fees. Many of these fees are assessed on a citywide or neighborhood basis for the following infrastructure categories: recreation and open space, childcare, streetscape and pedestrian infrastructure, bicycle infrastructure, and transit infrastructure. Planning Code Section 410 requires that the Planning Department and the Controller undertake a comprehensive evaluation of development fees every five years.

Pursuant to Planning Code Section 409, the Controller is charged with reviewing development impact fees and adjusting the fees annually on January 1. With the exception of the Inclusionary Affordable Housing Fee set forth in Planning Code Section 415 et seq., development impact fees are adjusted according to the Annual Infrastructure Construction Cost Inflation Estimate (“AICCIE”). The applicable AICCIE rate is determined by the Office of the City Administrator’s Capital Planning Group.

The procedure for assessment and collection of development impact fees is set forth in Planning Code Section 402 and Building Code Section 107A.13. Currently, development impact fees are assessed at time of building permit or site permit, and payment of the fees is due prior to the issuance of the first construction document. Fees continue to escalate per the AICCIE until the project sponsor pays the fees. Previously, under Building Code Section 107A.13.3, developers could defer payment of development impact fees until time of first certificate of occupancy, upon payment of a deferral fee surcharge. That deferral program expired on July 1, 2013.

Amendments to Current Law

This ordinance would modify the indexing, assessment, and time of payment for development impact fees; waive fees for certain development projects in the C-2 and PDR Districts; and adopt the Citywide Nexus Analysis supporting existing development impact fees for recreation and open space, childcare facilities, complete streets, and transit infrastructure.

Development Fee Indexing (Planning Code Section 409):

The ordinance would replace the existing AICCIE method of annual fee escalation with a flat 2% escalation rate. The ordinance would not change indexing of the inclusionary housing fee (Section 415 et seq.).

Development Fee Assessment (Planning Code Section 402(e)):

The ordinance would freeze the applicability and rates of development impact fees, with the exception of inclusionary housing fees under Section 415 et seq., at the following milestones:

Project Type	Fee Assessment Milestone
Projects approved after the effective date of ordinance	No further fee escalation or applicable new fees after time of Final Approval, as defined in the ordinance
Projects approved, but have not yet received site permit, before the effective date of ordinance	No further fee escalation or applicable new fees after the effective date of the ordinance
Projects that received first site or building permit before effective date of ordinance	Fees assessed at time of first site or building permit
Projects subject to a development agreement executed before the effective date of ordinance	Fees assessed pursuant to the development agreement and no later than the earlier of site or building permit issuance
Projects subject to a development agreement executed on or after the effective date of ordinance	Fees assessed at the earlier of site or building permit issuance, unless otherwise agreed by the parties.

This ordinance would provide that in the event of a conflict between Section 402 and a development agreement, the terms of the development agreement shall govern.

Development Fee Reassessment for Project Modifications, Extensions, and Renewals (Planning Code Section 402(e)):

If a development project requires a modification, renewal, or extension, the ordinance would prescribe procedures for reassessing development impact fees, with the exception of inclusionary housing fees under Section 415 et seq. A legislatively-authorized reduction in fees would not trigger reassessment of fees for the project, unless such a project also requires a modification, renewal, or extension.

In the event of a modification, renewal, or extension, the Planning Department would reassess fees as follows:

Project Type	Reassessment
Projects increasing Gross Floor Area of a use	Types of fees in effect at time of Project Approval would continue to apply, but rates of fees in effect at time of modification would be assessed on the new or additional Gross Floor Area
Projects reducing Gross Floor Area	Types and rates of fees in effect at time of Final Approval assessed on the remaining Gross Floor Area
Projects increasing or reducing Gross Floor Area that trigger applicability of new fees or different rates	Entire project square footage is subject to the types of fees in effect at time Final Approval, but rate in effect at the time of modification would apply
Projects receiving a renewal or extension	Types and rates of fees in effect at time of modification assessed on the entire project square footage

The procedures governing reassessment after modification, renewal, or extension would also apply to projects subject to a development agreement, unless the development agreement provides otherwise.

Development Fee Collection (Building Code Section 107A.13.3.1 and Planning Code Section 403):

The ordinance would enable project sponsors to defer payment of development impact fees, with the exception of fees that must be deposited into the Citywide Affordable Housing Fund. Specifically, the ordinance would:

- require payment of 15 to 20% of the total development impact fees prior to issuance of the first construction document;
- allow a project sponsor to defer payment of the balance of development impact fees prior to issuance of the first certificate of occupancy;

- provide that fee deferral is available to project sponsors that have not yet paid a development impact fee as of the effective date of this ordinance, notwithstanding a condition of approval that required the fee to be paid prior to issuance of the first construction document;
- provide that projects subject to a development agreement are also eligible for fee deferral, unless the parties agree otherwise.

Development Impact Fee Waivers for PDR and C-2 Districts (Planning Code Section 406):

This ordinance would also waive development impact fees for projects in the C-2 and PDR Districts that meet certain square footage and location requirements, contain no residential uses, and submit a complete Development Application on or before December 31, 2026, including any projects approved prior to the effective date of the ordinance that have not already paid development impact fees.

In the C-2 District, waivers would be limited to square footage devoted to all of the following uses: Hotel, Restaurant, Bar, Outdoor Activity, and Entertainment. In the PDR District, the fee waiver would be limited to square footage devoted to Retail or PDR Uses.

Citywide Nexus Analysis Adoption and Code Updates:

The ordinance would adopt the Nexus Analysis and the San Francisco Infrastructure Level of Service Analysis prepared by Hatch Associates Consultants, Inc., dated December 2021 (collectively “Nexus Study”), which support existing Citywide and neighborhood specific development impact fees for four infrastructure categories: recreation and open space, childcare, complete streets, and transit infrastructure. The ordinance contains findings that the Nexus Study satisfies the requirements of the Mitigation Fee Act. This ordinance would make conforming revisions to Article 4 of the Planning Code to reflect the updated Nexus Study.

This ordinance does not establish, increase, or impose a development impact fee for the purpose of the Mitigation Fee Act.

This ordinance does not modify any aspect of the Inclusionary Affordable Housing Fee, set forth in Planning Code section 415 et seq.

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