



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Change and Fee Amendment

HEARING DATE: JULY 19, 2012

Project Name: **Amendments relating to the Transit Impact Development Fee**
Case Number: 2012.0814T [Board File No. 120523]
Initiated by: Mayor Ed Lee / Introduced May 15, 2012
Staff Contact: Alicia John-Baptiste, Chief of Staff
alicia.johnbaptiste@sfgov.org, 415-558-6547
Reviewed by: AnMarie Rodgers, Manager of Legislative Affairs
Recommendation: **Recommend Approval with Modifications**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

PLANNING CODE AMENDMENT

The proposed Ordinance would amend Article 4 of the Planning Code by: 1) making technical corrections to specified definitions in Section 401 relating to the Transit Impact Development Fee (TIDF); and 2) amending Sections 408, 411.1 through 411.5, 411.7 and 411.8 to increase TIDF rates and clarify TIDF implementation and collection.

The Way It Is Now:

The Transit Impact Development Fee (TIDF) is an impact fee levied on most non-residential new development citywide to offset new development's impacts on the City's transit system. Revenue generated by the fee is directed to the San Francisco Municipal Transportation Agency (SFMTA) and is used to fund Muni capital and system maintenance. Residential projects, projects under 3,000 gross square feet, projects considered "charitably exempt", and some specific land uses, such as automotive services, are currently exempted from the fee. Development projects may be given a credit against the fee for a prior use so long as the prior use was active on the site within five years of the new development's application. When a new development project constitutes a change of use, the new development is charged the difference between the TIDF rate for Office and the TIDF rate for the proposed use, when such a difference exists.

The TIDF was first enacted by local ordinance in 1981 as an outgrowth of the work on the Downtown Plan.¹ The TIDF was created to acknowledge that new office development in the Downtown would result in increased demand for transit to accommodate that area's new workers. The original TIDF preceded the creation at the State level of the Mitigation Fee Act, which subsequently established a framework by which local jurisdictions could identify the impacts of new development on City services and adopt "impact fees" to address those impacts.² While cities had used "exactions" to fund

¹ The San Francisco Transit Impact Development Fee was first established by Ordinance No. 224-81.

² The California Mitigation Fee Act was enacted in 1987. See "A Short Overview of Development Impact Fees". Peter N. Brown, City Attorney, City of Carpinteria, and Graham Lyons, Deputy City Attorney, City of Carpinteria, February 27, 2003.

infrastructure projects since the 1920s, the San Francisco Transit Impact Development Fee Ordinance remained the only developer fee specifically dedicated to public transit for more than 20 years after its adoption.³ Chapter 38 of the Administrative Code held the first TIDF regulations. Beginning in 1981, the Public Utilities Commission, a predecessor to the SFMTA, was given responsibility for the assessment, imposition, and collection of the TIDF.

In 2001, the SFMTA commissioned a nexus study on the TIDF which determined that new non-residential uses outside the Downtown core also have an impact on the City's transit system. In 2004, the Board of Supervisors enacted a new TIDF ordinance which expanded the application of the fee citywide to most new non-residential uses and which increased the rates at which the TIDF is charged.⁴

In 2010, the Board of Supervisors enacted changes to the Planning and Building Codes to consolidate assessment and imposition of most impact fees with the Planning Department, and collection of those fees with the Department of Building Inspection. These changes were encompassed in the creation of Article 4 of the Planning Code. Article 4 also established rules and procedures for updating and reporting on impact fees, and moved the TIDF from the Administrative Code to the Planning Code.

The Way It Would Be:

The proposed ordinance makes changes to how the TIDF is applied and expands the types of new development subject to the TIDF, while still exempting residential development. The proposed ordinance also modifies definitions contained in the TIDF provisions, tying them to those already established in the Planning Code. It clarifies the roles of the SFMTA, the Planning Department, and the Department of Building Inspection as pertains to assessing, imposing, and collecting the TIDF, and establishes that TIDF updates will be conducted according to the provisions established in Article 4 of the Planning Code. Finally, the proposed ordinance increases the TIDF rates charged to most land uses, decreases the rate charged to Production, Distribution, and Repair (PDR) and to Museums, and modifies the way that change-of-use TIDF rates are determined. Base TIDF rates were last changed in 2004.

Application Changes

The proposed TIDF ordinance lowers the exemption threshold under which new development is not subject to the fee from 3,000 gross square feet to 800 gross square feet. This is the same threshold applied under the Eastern Neighborhoods and Market/Octavia Plan Area impact fees. The proposed ordinance provides a grandfathering provision, such that projects issued building or site permits prior to October 1, 2012 would be subject to the 3,000 gross square footage exemption, rather than the 800 gross square footage exemption. The proposed ordinance clarifies that the TIDF is calculated on a gross square footage basis, which has been the practice but which is not explicitly called out in the existing ordinance.

The proposed ordinance also extends the TIDF to apply to non-profit and institutional uses by eliminating the existing exemption for new development meeting the "charitably exempt" criteria

³ San Francisco Planning Department, prepared by Nelson\Nygaard Consulting (2001), Transit Impact Development Fee Analysis, Final Report for San Francisco, 1-1.

⁴ Ordinance Number 199-04, approved August 5, 2004.

(Section 411.8). As with the change in exemption threshold noted above, the proposed ordinance provides a grandfathering provision for these types of projects, such that those new development projects currently considered charitably exempt which file an application for environmental evaluation, categorical exemption, or preliminary project assessment by October 1, 2012 are not subject to the fee. The grandfathering provision would allow grandfathering of non-profit and institutional uses in Redevelopment Areas if these projects file relevant applications by October 1, 2012.

The proposed ordinance makes a number of other changes which have the effect of expanding the types of projects subject to the TIDF. It removes the existing exemption for projects categorized as “Automotive Services” and as “Wholesale Storage of Materials and Equipment”, by bringing those two categories of projects under the broader PDR definition. It eliminates the exemption for projects on property “beneficially owned” by the City and County of San Francisco. It also clarifies that accessory uses are subject to the fee if they fall within a land use category subject to the fee, even if the use to which they are accessory is exempted from the fee.

The proposed ordinance makes one other change which could affect the number or type of projects subject to the TIDF. Currently, new development receives a credit against the TIDF for a prior use on the applicable site if the prior use was active on the site within the five years before the new development application is submitted. Under the proposed ordinance, this provision is eliminated and instead new development may receive a credit for a prior use only if the prior use was not “abandoned” as defined in the Planning Code (Sections 178(d), 183, and 186.1(d)). The Planning Code’s definition of abandonment pertains only to conditional and nonconforming uses and establishes a three-year timeframe of inactivity to constitute abandonment. The effect of this change, therefore, is that it 1) allows new development a prior use credit with no time limit if the prior use was principally permitted; and 2) shortens the five-year timeframe of inactivity to three years if the prior use was either a conditional or nonconforming use.

Definition Changes

The proposed ordinance modifies land use definitions under the TIDF so that they are consistent with definitions already existing in the Planning Code. As noted above, the TIDF was originally established in the Administrative Code and terms and definitions created or updated in the Planning Code have not always been reflected in the Administrative Code. The proposed ordinance makes the following changes to definitions:

- Provides a Planning Code citation to the definition of “Child care facilities” (Section 209.3(e) and (f))
- Excludes “animal services as defined in Section 224(a) and (b)” from the definition of “Medical and Health Services”
- Establishes a definition for “Museum”⁵
- Deletes “laundering and cleaning and pressing” from the definition of “Retail/Entertainment”

⁵ “Museum.” A permanent institution open to the public, which acquires, conserves, researches, communicates and exhibits the heritage of humanity or the environment.

The proposed ordinance creates a definition for “Museum” because the nexus study underlying the proposed TIDF rate update identified a lower trip generation rate for Museums compared to other Cultural/Educational/Institutional uses, the land use category which currently encompasses Museums.

Role-Clarifying Changes

The proposed ordinance establishes two different procedures for assessing and imposing the TIDF, depending on the date when a building or site permit for a new development project was first issued. For projects where a building or site permit was issued prior to July 1, 2010, under the proposed ordinance, the SFMTA assesses and imposes the TIDF. For projects issued a building or site permit after July 1, 2010, the Planning Department assesses and imposes the TIDF. In both cases, responsibility for collecting the TIDF rests with the Department of Building Inspection. The proposed ordinance establishes these two different procedures because, prior to July 1, 2010, the TIDF resided in the Administrative Code and the SFMTA was responsible for assessing, imposing, and collecting the fee. On July 1, 2010, the Article 4 provisions covering impact fees became effective and gave responsibility to the Planning Department to assess and impose the TIDF, and responsibility to the Department of Building Inspection to collect the TIDF.

In addition, the proposed ordinance establishes that updates to and reporting on the TIDF will be done in accordance with the rules and procedures delineated in Article 4, Section 410, which covers these for impact fees generally.

Fee Rate Changes

The proposed ordinance amends the TIDF by increasing some rates, decreasing the rate for PDR and Museum projects, and modifying the calculation for determining the rate paid for projects which are a change-of-use. The current and proposed TIDF rates are as follows:

Land Use Category	Current Fee	Proposed Fee
Office (MIPS)	\$12.06	\$12.64
Cultural/Institution/Education	\$12.06	
<i>Day Care/Community Center</i>	\$12.06	\$13.30
<i>Post-Secondary School</i>	\$12.06	\$13.30
<i>Museum</i>	\$12.06	\$11.05
<i>Other Institutional</i>	\$12.06	\$13.30
Medical and Health Services	\$12.06	\$13.30
Production/Distribution/Repair	\$ 9.65	\$ 6.80
Retail/Entertainment	\$12.06	\$13.30
Visitor Services	\$ 9.65	\$12.64

For projects which are a change-of-use, the TIDF is currently charged by calculating the differential between the TIDF rate for the proposed use and the TIDF rate for Office. Under the proposed ordinance, the TIDF owed for change-of-use projects would be based on the difference between the TIDF rate for the proposed use and the TIDF rate for the existing use, Office or otherwise. In both cases, the TIDF is only charged if the TIDF rate for the proposed use is higher than the TIDF rate for the existing use.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

On May 15, 2012, Mayor Lee, along with co-sponsors Supervisor Wiener and Supervisor Olague, introduced both the proposed TIDF ordinance as well as a proposed ordinance establishing the Transportation Sustainability Program. The Transportation Sustainability Program (TSP) is designed to resolve the inconsistency between the City's adopted policies and programs – which emphasize multimodal transportation solutions – and the focus on speed of automobile throughput which currently exists under the City's review of environmental impacts of proposed projects under the California Environmental Quality Act (CEQA). The TSP has two components: 1) changing the methodology used to analyze transportation impacts under CEQA by eliminating automobile Level of Service as a metric and replacing it with a metric that takes into account all modes of transportation; and 2) establishing a citywide Transportation Sustainability Fee (TSF) to offset impacts of new development to the City's transportation network. Taken together, the change to the transportation impact analysis methodology and the establishment of a citywide transportation impact fee ensures that development's cumulative impacts to the transportation system are offset by improvements to the system as whole, in line with City policies and priorities, including the longstanding *Transit First* policy⁶.

The Planning Department is preparing an Environmental Impact Report (EIR) to study the changes proposed under the TSP and their effects on the cumulative transportation system impacts of twenty years of project development. Because the TSP cannot move forward until the EIR is completed and certified, the TSP ordinance is being held at the Board of Supervisors until CEQA review is complete, enabling the Planning Commission to provide a recommendation to the Board.

In the absence of the TSP, the TIDF serves as the City's mechanism to offset new development's impacts on the transit system. Although the TIDF is indexed each year to adjust for inflation, no adjustment to

⁶ In 1973, the San Francisco City Planning Commission and Board of Supervisors adopted the Transit First policy, giving top priority to public transit investments as the centerpiece of the City's transportation policy.

the TIDF base rates has been made since it was last updated in 2004, and the fee indexing has not kept pace with the increase in costs associated with providing the transit service required by new development. In addition, with the consolidation of the TIDF under Article 4 of the Planning Code, a number of technical and clarifying corrections are required for the appropriate assessment and imposition of the TIDF. For these reasons, the Department supports an update to the TIDF ordinance.

However, the Department recommends a number of modifications to the proposed ordinance, to bring the ordinance into greater alignment with the proposed TSP and to further correct administrative concerns. Those modifications are described below.

Recommendation #1: Introduce a Policy Credits Program

The proposed TSP ordinance establishes a Policy Credits program to support desirable programs and/or policy outcomes by providing a reduction to or waiver from the TSF. The Policy Credits program would provide fee reductions to or waivers from the TSF to the following types of projects:

- Projects which build less than the maximum allowed parking in those Zoning Districts with such maximums
- Non-formula retail small businesses using existing vacant space less than 5,000 square feet
- Affordable housing projects
- Small residential projects, defined as projects of 20 units or less

The Department recommends implementing the Policy Credits program developed under the TSP with the proposed update of the TIDF. Because the TIDF does not apply to residential, the Department recommends establishing a Policy Credits program for projects building reduced parking and for non-formula retail small businesses using existing vacant space less than 5,000 square feet. Similar to the TSP's Policy Credits program, the TIDF Policy Credits program could allocate three percent of annual projected TIDF revenue (approximately \$740,000), which would be applied to projects qualifying for the Policy Credits on a first-come, first-served basis. Projects could receive a Policy Credit up to 90 percent of the total fee owed. The SFMTA Board has indicated that while it is supportive of the Policy Credits program as it applies to the TSP, it would like to cap the total Policy Credit amount provided to any project to recognize that all new development has an impact on the transportation system. A cap of 90 percent would serve that purpose.

In conducting outreach on the proposed TIDF, staff has heard concern from small businesses that the reduction in the square footage exemption threshold would result in more fees for more projects. Establishing the Policy Credits program would allow small businesses occupying up to 5,000 square feet to avoid paying the TIDF, where as the current exemption threshold is 3,000 square feet. In addition, the Department recommends extending the grandfathering period for the square footage threshold change to December 1, 2012, from October 1, 2012, as the proposed TIDF ordinance is unlikely to be enacted prior to November 2012.

Recommendation #2: Extend the Grandfathering Period for Non-Profit and Institutional Uses

The proposed TSP ordinance levies the TSF on all new development, including residential and non-profit and institutional uses, with the exception of single-family homes and those projects qualifying for Policy Credits as described above. In order for the proposed TIDF to align with the proposed TSP, the

Department supports extending the TIDF to non-profit and institutional uses. However, the proposed TSP is approximately 18 months from implementation, providing non-profit and institutional uses with time to adjust their capital planning and programming to account for imposition of a new impact fee. The Department recommends extending the grandfathering period provided in the proposed TIDF to similarly allow lead time for these types of projects to adjust their fundraising or other capital funding mechanisms in order to accommodate the TIDF. The Department recommends extending the grandfathering period from October 1, 2012 to January 1, 2014, or approximately the date at which the TSP may take effect if adopted.

Recommendation #3: Retain the Five-Year Timeframe for Inactive Uses

As noted above, the proposed TIDF changes the timeframe under which a prior use must be “active” to conform to the Planning Code’s definition of abandoned uses. However, that definition applies only to cases of conditional or nonconforming uses. The Department has heard concern from small businesses about this proposed change. The Department also believes that the language in the current TIDF more clearly and accurately reflects the intent to provide a prior use credit when a site has been active in the preceding five years. Therefore, the Department recommends retaining the language in the current TIDF which states that “a credit for prior use may be given only if the prior use was active on the site within five years before the date of the application for a building or site permit for the proposed use”.

Recommendation #4: Provide SFMTA with Collection and Appeal Procedures and Authority

In July 2010, Article 4 of the Planning Code established the Department of Building Inspection (DBI) as the responsible party for collection of impact fees, including the TIDF. While each impact fee is due at a prescribed time, all fees, even if deferred, must be collected by DBI prior to issuance of the first certificate of occupancy. After a certificate of occupancy is issued, DBI has little, if any, contact with the project sponsor. Prior to its inclusion in Article 4 of the Planning Code, the TIDF was collected by the SFMTA upon the earlier of (1) the date when 50 percent of the net rentable area of the project had been occupied; or (2) issuance of the temporary certificate of occupancy (TCO) and as a condition precedent to issuance of a certificate of final completion and occupancy (CFC). During the transition period and in some earlier cases – in part because multiple agencies were involved in issuing permits and collecting fees – some projects owing TIDF were allowed to move forward without paying the fees due. This leaves a category of projects where TCO or CFC has been issued but the TIDF has not been paid.

The Department recommends establishing authority with the SFMTA to collect TIDF in those cases where the TCO or CFC has already been issued. Because DBI does not routinely have contact with project sponsors after these permits have been issued, DBI is not in a position to administer TIDF collection in these cases. The SFMTA can dedicate the resources necessary to ensure that all projects owing the TIDF pay the TIDF.

Related to this, the Department recommends establishing an appeal mechanism for the SFMTA so that in those cases where the SFMTA notifies a project sponsor of the TIDF due (applicable when a project’s building or site permit was issued prior to July 1, 2010), the project sponsor has the ability to pursue reconsideration of the amount due. A parallel appeal mechanism exists in Article 4 of the Planning Code and applies when the assessment and imposition of the fee is done by the Planning Department.

Recommendation #5: Clarify the Accessory Use Provision to Exclude Residential

As noted above, the proposed ordinance states that a use which is accessory to a use which is exempted from the TIDF is nonetheless levied the TIDF if the accessory use is not itself exempt. The proposed TIDF ordinance does not apply the TIDF to residential uses; however, the language on accessory uses may be read to apply to those uses which are accessory to residential. As this was not the intent of the proposed ordinance, the Department recommends clarifying the accessory use provision to clearly identify that uses accessory to residential are also exempted from the TIDF. It should be noted that the TIDF does apply to the portion of mixed use development that is non-residential, both currently and under the proposed ordinance.

ENVIRONMENTAL REVIEW

The proposal to amend Planning Code Article 4 by: 1) making technical corrections to specified definitions in Section 401 relating to the Transit Impact Development Fee (TIDF); and 2) amending Sections 408, 411.1 through 411.5, 411.7 and 411.8 to increase TIDF rates and clarify TIDF implementation and collection would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15273 of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Department has received one phone call comment in regard to the proposed Ordinance. The comment was against the proposal to charge independent schools the TIDF and in support of the remainder of the proposed ordinance. The Department also received one email in regard to the proposed Ordinance. The email asked the City to reconsider the proposal to apply the TIDF to uses defined as "Wholesale Storage of Materials and Equipment", questioning whether these had a significant impact on transit service demand and expressing that a new fee for such uses could be the determining factor in a project not being able to move forward.

In addition, the Department provided an informational presentation on the proposed TIDF ordinance to the Small Business Commission on June 11, 2012. The Small Business Commission passed a resolution which: 1) encouraged the Board of Supervisors to retain the current 3,000 square foot exemption threshold; 2) encouraged the Board of Supervisors to retain the current five-year inactivity timeframe; and 3) encouraged the Board of Supervisors to implement the Policy Credits program for non-formula retail small businesses occupying existing vacant space less than 5,000 square feet IF the Board of Supervisors chose NOT to retain the current 3,000 square foot exemption threshold. A copy of the Small Business Commission's resolution is attached.

RECOMMENDATION: Recommendation of Approval with Modification
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Attachments:

Exhibit A: Draft Planning Commission Resolution

Exhibit B: Board of Supervisors File No. 120523
Exhibit C: Small Business Commission Resolution



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution No.

HEARING DATE: JULY 19, 2012

Project Name: **Amendments relating to the Transit Impact Development Fee**
Case Number: 2012.0814T [Board File No. 120523]
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1650 Mission St.
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San Francisco,
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Reception:
415.558.6378

Fax:
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RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE ARTICLE 4 BY: 1) MAKING TECHNICAL CORRECTIONS TO SPECIFIED DEFINITIONS IN SECTION 401 RELATING TO THE TRANSIT IMPACT DEVELOPMENT FEE (TIDF); AND 2) AMENDING SECTIONS 408, 411.1 THROUGH 411.5, 411.7 AND 411.8 TO INCREASE TIDF RATES AND CLARIFY TIDF IMPLEMENTATION AND COLLECTION.

PREAMBLE

Whereas, on May 15, 2012, Mayor Ed Lee and co-sponsors Supervisor Scott Wiener and Supervisor Christina Olague introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 120523 which would amend Article 4 of the Planning Code to make technical corrections to definitions relating to the TIDF, increase TIDF rates, and clarify TIDF implementation and collection; and

Whereas, on July 19, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed text and fee changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15273; and

Whereas, the 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 the applicant, Department staff, and other interested parties; and

Whereas, all the pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends *approval of the proposed Ordinance with modifications* and adopts the attached Draft Resolution to that effect.

The five recommended modifications include:

1. **Introduce a Policy Credits Program;**
2. **Extend the Grandfathering Period for Non-Profit and Institutional Uses;**
3. **Retain the Five-Year Timeframe for Inactive Uses;**
4. **Provide SFMTA with Collection and Appeal Procedures and Authority; and**
5. **Clarify the Accessory Use Provision to Exclude Residential.**

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:

1. The Transit Impact Development Fee (TIDF) serves as the City's primary mechanism to offset the impacts to the transit system of new development;
2. The TIDF base rates have not been updated since 2004 and the annual fee-indexing has not kept pace with the increase in cost to provide transit service since 2004;
3. The SFMTA completed a nexus study update to the TIDF in 2011, as required by law;
4. The transition from TIDF's inclusion in Chapter 38 of the Administrative Code to Article 4 of the Planning Code has resulted in administrative inconsistencies and difficulty in collecting the TIDF in some cases;
5. The Commission believes that the TIDF should be aligned in its application and policies to the greatest extent possible with the proposed Transportation Sustainability Fee;
6. The Commission recommends implementing a Policy Credits program under the TIDF which would provide up to three percent of annual projected TIDF revenue on a first-come, first-served basis, in the form of credits to qualifying uses and that those qualifying uses would be comprised of projects which build less than the allowable maximum parking in Zoning Districts which have such maximums and projects which are non-formula retail small businesses occupying up to 5,000 square feet of existing vacant space;
7. Consistent with the expressed policy direction of the San Francisco Municipal Transportation Agency Board of Directors, the Commission recommends capping the Policy Credits available to any individual project at 90 percent of the total TIDF owed by that project;
8. The Commission recommends extending the grandfathering period for projects subject to the TIDF such that projects under 3,000 gross square feet with a building or site permit issued prior to December 1, 2012 will not be subject to the TIDF;

9. The Commission supports the development of non-profit and institutional uses and recognizes that these uses require lead time to modify their capital planning to accommodate a new fee and therefore the Commission recommends extending the grandfathering period provided to these uses to January 1, 2014;
10. Consistent with the expressed policy direction of the Small Business Commission, the Commission recommends retaining the five-year inactivity clause as described in the existing TIDF ordinance;
11. The Commission recommends providing the SFMTA with the authority to collect TIDF for projects which have already been issued a Temporary Certificate of Occupancy and/or a Certificate of Final Completion and the Commission further recommends providing project sponsors with an appeal procedure in those cases where the SFMTA is the agency responsible for collecting the TIDF;
12. The proposed TIDF ordinance does not extend to residential uses and the Commission recommends clarifying the provision which levies the TIDF on accessory uses to explicitly exclude uses which are accessory to residential, provided, however that the TIDF does apply on the portion of a mixed use development which is not residential;
13. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

TRANSPORTATION ELEMENT

THE TRANSPORTATION ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE IMPORTANT COMPONENTS OF THE LOCAL AND REGIONAL TRANSPORTATION SYSTEM.

OBJECTIVE 1

MEET THE NEEDS OF ALL RESIDENTS AND VISITORS FOR SAFE, CONVENIENT AND INEXPENSIVE TRAVEL WITHIN SAN FRANCISCO AND BETWEEN THE CITY AND OTHER PARTS OF THE REGION WHILE MAINTAINING THE HIGH QUALITY LIVING ENVIRONMENT OF THE BAY AREA.

POLICY 1.3

Give priority to public transit and other alternatives to the private automobile as the means of meeting San Francisco's transportation needs, particularly those of commuters.

The proposed ordinance directly addresses the need for enhanced transit service to accommodate commuters. By requiring that new non-residential development pay an impact fee to offset the impacts on transit of that new development, and by directing revenue from that fee to Muni operations and capital improvements, the City is able to provide the transit service necessary to support commuters en route to their place of employment.

OBJECTIVE 11

ESTABLISH PUBLIC TRANSIT AS THE PRIMARY MODE OF TRANSPORTATION IN SAN FRANCISCO AND AS A MEANS THROUGH WHICH TO GUIDE FUTURE DEVELOPMENT AND IMPROVE REGIONAL MOBILITY AND AIR QUALITY.

POLICY 11.2

Continue to favor investment in transit infrastructure and services over investment in highway development and other facilities that accommodate the automobile.

POLICY 11.3

Encourage development that efficiently coordinates land use with transit service, requiring that developers address transit concerns as well as mitigate traffic problems.

The proposed ordinance explicitly funds investments in the City's transit system. It also requires that developers address transit concerns by paying the Transit Impact Development Fee.

OBJECTIVE 21

DEVELOP TRANSIT AS THE PRIMARY MODE OF TRAVEL TO AND FROM DOWNTOWN AND ALL MAJOR ACTIVITY CENTERS WITHIN THE REGION.

POLICY 21.1

Provide transit service from residential areas to major employment centers outside the downtown area.

POLICY 21.2

Where a high level of transit ridership or potential ridership exists along a corridor, existing transit service or technology should be upgraded to attract and accommodate riders.

POLICY 21.11

Ensure the maintenance and efficient operation of the fleet of transit vehicles.

The proposed ordinance supports these policies by establishing a means to generate revenue to provide transit service to employment centers, accommodate riders on high-volume transit corridors, fund transit service upgrades and technology, and invest in maintaining and efficiently operating the transit fleet of vehicles.

14. The proposed ordinance is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

- A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of neighborhood-serving retail uses nor on opportunities for resident employment in and ownership of such businesses.

- B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will have no adverse effect on existing housing and neighborhood character.

- C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

- D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed Ordinance will support MUNI service by providing needed funding to supply and operate the transit service required to accommodate new development. The proposed Ordinance will not overburden the streets or neighborhood parking and may reduce the burden on these through funding transit service.

- E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments.

- G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments.

- H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on July 19, 2012.

Linda Avery

Draft Resolution No.
Hearing Date: July 19, 2012

CASE NO. 2012.0814T
Transit Impact Development Fee

Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 19, 2012

FILE NO. 120523

ORDINANCE NO.

1 [Planning Code - Transit Impact Development Fee Increase and Updates]

2

3 **Ordinance amending Planning Code Article 4 by: 1) making technical corrections to**

4 **specified definitions in Section 401 relating to the Transit Impact Development Fee**

5 **(TIDF); and 2) amending Sections 408, 411.1 through 411.5, 411.7, and 411.8 to increase**

6 **TIDF rates and clarify TIDF implementation and collection; and making environmental**

7 **findings, Section 302 findings, and findings of consistency with the General Plan and**

8 **the Priority Policies of Planning Code Section 101.1.**

9 NOTE: Additions are *single-underline italics Times New Roman*;

10 deletions are *strike-through italics Times New Roman*.

11 Board amendment additions are double-underlined;

12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. Findings. The Board of Supervisors of the City and County of San

15 Francisco hereby finds and determines that:

16 (a) The Planning Department has determined that the actions contemplated in this

17 ordinance comply with the California Environmental Quality Act (California Public Resources

18 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of

19 Supervisors in File No. _____ and is incorporated herein by reference.

20 (b) On _____, the Planning Commission, in Resolution No.

21 _____ approved this legislation, recommended it for adoption by the Board of

22 Supervisors, and adopted findings that it will serve the public necessity, convenience and

23 welfare. Pursuant to Planning Code Section 302, the Board adopts these findings as its own.

24 A copy of said Resolution is on file with the Clerk of the Board of Supervisors in File No.

25 _____, and is incorporated by reference herein.

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1 (c) In Resolution No. _____, the Planning Commission adopted findings
 2 that this legislation is consistent, on balance, with the City's General Plan and the eight priority
 3 policies of Planning Code Section 101.1. The Board adopts these findings as its own.
 4

5 Section 2. The San Francisco Planning Code is hereby amended by amending, adding
 6 and deleting the following definitions to Section 401:

7 SEC. 401. DEFINITIONS.

8 "Base service standard." The relationship between revenue service hours
 9 offered by the Municipal Railway and the number of automobile and transit trips estimated to
 10 be generated by certain non-residential uses, expressed as a ratio where the numerator
 11 equals the average daily revenue service hours offered by MUNI and the denominator equals
 12 the daily automobile and transit trips generated by non-residential land uses as estimated by
 13 the TIDF Study or updated under Section ~~411.5410~~ of this Article.

14 ~~"Development under the TIDF." Any new construction, or addition to or conversion of an~~
 15 ~~existing structure under a building or site permit issued on or after September 4, 2004, that results in~~
 16 ~~3,000 gross square feet or more of a covered use. In the case of mixed use development that includes~~
 17 ~~residential development, the term "new development" shall refer to only the non-residential portion of~~
 18 ~~such development. "Existing structure" shall include a structure for which a sponsor already paid a fee~~
 19 ~~under the prior TIDF ordinance, as well as a structure for which no TIDF was paid.~~

20 "Director of Transportation." The Director of Transportation of the MTA or his or her
 21 designee(s).

22 Cultural/Institution/Education (CIE)." An economic activity category subject to the
 23 TIDF that includes, but is not limited to, schools, as defined in Sections 209.3(g), (h), and (i)
 24 and 217(f)-(i) of this Code; child care facilities as defined in Sections 209.3 (e) and (f); museums
 25 and zoos; and community facilities, as defined in Sections 209.4 and 221(a)-(c) of this Code.

1 "Gross floor area." The total area of each floor within the building's exterior walls, as
 2 defined in Section 102.9(b)(12) of this Code, except that for the purposes of determining the
 3 applicability of the TIDF, the exclusion from this definition set forth in Section 102.9(b)(12) shall not
 4 apply.

5 "~~MTA Director." The Director of MTA or his or her designee.~~

6 "Medical and Health Services." An economic activity category under the TIDF that
 7 includes, but is not limited to, those non-residential uses defined in Sections 209.3(a) and
 8 217(a) of this Code; ~~animal services, as defined in Section 224(a) and (b) of this Code;~~ and social
 9 and charitable services, as defined in Sections 209.3(d) and 217(d) of this Code.

10 "Museum." A permanent institution open to the public, which acquires, conserves,
 11 researches, communicates and exhibits the heritage of humanity or the environment.

12 "~~New development." Under the TIDF, any new construction, or addition to or conversion of an~~
 13 ~~existing structure under a building or site permit issued on or after September 4, 2004 that results in~~
 14 ~~3,000 gross square feet or more of a use covered by the TIDF. In the case of mixed use development~~
 15 ~~that includes residential development, the term "new development" shall refer to only the non-~~
 16 ~~residential portion of such development. "Existing structure" shall include a structure for which a~~
 17 ~~sponsor already paid a fee under the prior TIDF ordinance, as well as a structure for which no TIDF~~
 18 ~~was paid.~~

19 "PDR use." ~~Space within any structure or portion thereof intended or primarily suitable for or~~
 20 ~~accessory to the operation, of~~ An economic activity category under the TIDF that includes, but is not
 21 limited to, uses defined in San Francisco Planning Code Sections 220, 222, 223, 224, 225,
 22 226, 227(a), 227(b), and 227(p), regardless of the zoning district that the use is located in.

23 "Retail/entertainment." An economic activity category under the TIDF that includes, but
 24 is not limited to, a retail use; an entertainment use; and massage establishments, as defined in

1 Section 218.1 of this Code; ~~laundrying, and cleaning and pressing, as defined in Section 220 of this~~
 2 ~~Code.~~

3 "TIDF; Transit Impact Development Fee." The development fee that is the
 4 subject of Section 411.1 et seq. of this Article.

5 "TIDF Study." The study commissioned by the San Francisco Planning
 6 Department and performed by Nelson/Nygaard Associates entitled "Transit Impact
 7 Development Fee Analysis - Final Report," dated May 2001, including all the Technical
 8 Memoranda supporting the Final Report and the Nelson/Nygaard update materials contained
 9 in Board of Supervisors File No. 040141.

10 "TIDF Update Report." The study commissioned by MTA and performed by Cambridge
 11 Systematics, Inc. and Urban Economics entitled "Transit Impact Development Fee Update Draft Final
 12 Report," dated February, 2011, and contained in Board of Supervisors File No. _____.

13 "Total developable site area." That part of the site that can be feasibly developed
 14 as residential development, excluding land already substantially developed, parks, required
 15 open spaces, streets, alleys, walkways or other public infrastructure.

16 "Treasurer." The Treasurer for the City and County of San Francisco.

17 "Trip generation rate." The total number of automobile and Municipal Railway
 18 trips generated for each 1,000 square feet of development in a particular economic activity
 19 category as established in the TIDF Study, the 2011 TIDF update report, or pursuant to the five-
 20 year review process established in Section 411.5410 of this Article.

21
 22 Section 3. The San Francisco Planning Code is hereby amended by amending Section
 23 408 to read as follows:

24 SEC. 408. LIEN PROCEEDINGS.

1 If a first construction document or first certificate of occupancy, whichever applies, is DBI
2 inadvertently or mistakenly issues ~~issued~~ the first construction document or first certificate of
3 occupancy, whichever applies, prior to the project sponsor paying all development fees due and
4 owing, or prior to the sponsor satisfying any development impact requirement, DBI shall
5 institute lien proceedings to recover the development fee or fees, plus interest and any
6 Development Fee Deferral Surcharge, under Section 107A.13.15 of the San Francisco
7 Building Code.

8
9 Section 4. The San Francisco Planning Code is hereby amended by amending
10 Sections 411.1, 411.2, 411.3, 411.4, 411.5, 411.7 and 411.8 to read as follows:

11 SEC. 411.1. FINDINGS.

12 A. In 1981, the City enacted an ordinance imposing a Transit Impact
13 Development Fee on new office development in the Downtown area of San Francisco. The
14 TIDF was based on studies showing that the development of new office uses places a burden
15 on the Municipal Railway, especially in the downtown area of San Francisco during commute
16 hours, known as "peak periods." The TIDF was based on two cost analyses: one by the
17 Finance Bureau of the City's former Public Utilities Commission, performed in 1981, and one
18 by the accounting firm of Touche-Ross, performed in March 1983 to defend a legal challenge
19 to the TIDF.

20 B. In 2000, the Planning Department, with assistance from the Municipal
21 Transportation Agency, commissioned a study of the TIDF. In 2001, the Department selected
22 Nelson/Nygaard Associates, a nationally recognized transportation consulting firm, to perform
23 the study. Later in 2001, Nelson/Nygaard issued its final report ("TIDF Study"). Before issuing
24 the TIDF Study, Nelson/Nygaard prepared several Technical Memoranda, which provided
25 detailed analyses of the methodology and assumptions used in the TIDF Study.

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1 C. The TIDF Study concluded that new non-residential uses in San Francisco will
2 generate demand for a substantial number of auto and transit trips by the year 2020. The
3 TIDF Study confirmed that while new office construction will have a substantial impact on
4 MUNI services, new development in a number of other land uses will also require MUNI to
5 increase the number of revenue service hours. The TIDF Study recommended that the TIDF
6 be extended to apply to most non-residential land uses. The TIDF Study found that certain
7 types of new development generate very few daily trips and therefore may not appropriately
8 be charged a new TIDF.

9 D. The TIDF Study further recommended that the City enact an ordinance to
10 impose transit impact fees that would allow MUNI to maintain its base service standard as
11 new development occurs throughout the City. The proposed ordinance would require
12 sponsors of new development in the City to pay a fee that is reasonably related to the
13 financial burden imposed on MUNI by the new development. This financial burden is
14 measured by the cost that will be incurred by MUNI to provide increased service to maintain
15 the applicable base service standard over the life of such new development.

16 E. Subsequently, the City selected Cambridge Systematics, Inc. to prepare a TIDF
17 Update Report, including an updated nexus study for the TIDF. This Report was completed in 2011,
18 and in accordance with the applicable provisions of this Code, used updated data to calculate base
19 service standard fee rates for the Economic Activity Categories subject to the TIDF. The Report also
20 analyzed trip generation rates for these Economic Activity Categories using updated data, and also
21 divided the Retail/Entertainment and Cultural/Institution/Education categories into subcategories in
22 order to reflect the comparative diversity of trip generation rates among these land uses.

23 F. Based on projected new development over the next 20 years, the TIDF will
24 provide revenue to MUNI that is significantly below the costs that MUNI will incur to mitigate
25 the transit impacts resulting from the new development.

1 FG. The TIDF is the most practical and equitable method of meeting a portion of
 2 the demand for additional Municipal Railway service and capital improvements for the City
 3 caused by new non-residential development.

4 GH. Based on the above findings and the nexus study studies performed, the City
 5 determines that the TIDF satisfies the requirements of the Mitigation Fee Act, California
 6 Government Code Section 66001, as follows:

7 (1) The purpose of the fee is to meet a portion of the demand for additional
 8 Municipal Railway service and capital improvements for the City caused by new
 9 nonresidential development.

10 (2) Funds from collection of the TIDF will be used to increase revenue service
 11 hours reasonably necessary to mitigate the impacts of new non-residential development on
 12 public transit and maintain the applicable base service standard.

13 (3) There is a reasonable relationship between the proposed uses of the TIDF
 14 and the impact on transit of the new developments on which the TIDF will be imposed.

15 (4) There is a reasonable relationship between the types of new development
 16 on which the TIDF will be imposed and the need to fund public transit for the uses specified in
 17 Section 38.8411.6 of this ordinanceCode.

18 (5) There is a reasonable relationship between the amount of the TIDF to be
 19 imposed on new developments and the impact on public transit from the new developments.

20 SEC. 411.2. DEFINITIONS

21 (a) "New development." 1) any new construction, or addition to or conversion of, an
 22 existing structure under one or more building or site permits issued on or after September 4, 2004, but
 23 before October 1, 2012, that cumulatively results in 3,000 gross square feet or more of a use covered
 24 by the TIDF; or 2) any new construction, or addition to or conversion of, an existing structure under
 25 one or more building or site permits issued on or after October 1, 2012 that cumulatively result in 800

1 gross square feet or more of a use covered by the TIDF. In the case of mixed use development that
 2 includes residential development, the term "new development" shall refer to only the non-residential
 3 portion of such development. For purposes of this definition, "existing structure" shall include a
 4 structure for which a sponsor already paid a fee under the prior TIDF ordinance, as well as a structure
 5 for which no TIDF was paid.

6 (b) For additional definitions, Ssee Section 401 of this Article.

7
 8 SEC. 411.3. APPLICATION OF TIDF.

9 (a) Application. Except as provided in Subsections (1) and (2) below, the TIDF
 10 shall be payable with respect to any new development in the City for which a building or site
 11 permit is issued on or after September 4, 2004. In reviewing whether a development project is
 12 subject to the TIDF, the project shall be considered in its entirety. A sponsor shall not seek
 13 multiple applications for building permits to evade paying the TIDF for a single development
 14 project.

15 (1) The TIDF shall not be payable on new development, or any portion thereof,
 16 for which a TIDF has been paid, in full or in part, under the prior TIDF Ordinance adopted in
 17 1981 (Ordinance No. 224-81; former Chapter 38 of the Administrative Code as amended
 18 through June 30, 2010), except where (A) gross square feet of use is being added to the
 19 building; or (B) the TIDF rate for the new development is in an economic activity category with
 20 a higher fee rate than the current rate for the economic activity category under which the TIDF was
 21 originally paid~~rate set for MIPS~~, as set forth in Section 411.3(e).

22 (2) No TIDF shall be payable on the following types of new development.

23 (A) New development on property owned (including beneficially owned) by
 24 the City, except for that portion of the new development that may be developed by a private
 25 sponsor and not intended to be occupied by the City or other agency or entity exempted under

1 Section 411.1 et seq., in which case the TIDF shall apply only to such non-exempted portion.
2 New development on property owned by a private person or entity and leased to the City shall
3 be subject to the fee, unless *the City is the beneficial owner of such new development or unless*
4 such new development is otherwise exempted under this Section.

5 (B) Any new development in Mission Bay North or South to the extent
6 application of this Chapter would be inconsistent with the Mission Bay North Redevelopment
7 Plan and Interagency Cooperation Agreement or the Mission Bay South Redevelopment Plan
8 and Interagency Cooperation Agreement, as applicable.

9 (C) New development located on property owned by the United States or
10 any of its agencies to be used exclusively for governmental purposes.

11 (D) New development located on property owned by the State of California
12 or any of its agencies to be used exclusively for governmental purposes.

13 (E) New development for which a project sponsor filed an application for
14 environmental evaluation or a categorical exemption prior to April 1, 2004, and for which the
15 City issued a building or site permit on or before September 4, 2008; provided however, that
16 such new development may be subject to the TIDF imposed by Ordinance No. 224-81, as
17 amended through June 30, 2004, except that the Department and the Development Fee
18 Collection Unit at DBI shall be responsible for the administration, imposition, review and
19 collection of any such fee consistent with the administrative procedures set forth in Section
20 411.1 et seq. The Department shall make the text of Ordinance No. 224-81, as amended
21 through June 30, 2004, available on the Department's website and shall provide copies of that
22 ordinance upon request.

23 (F) The following types of new developments, except to the extent that such
24 new development is also captured under a more specific use under this Code that is not otherwise
25 exempt:

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1 (i) Public facilities/utilities, as defined in Section 209.6 of this Code,
 2 except that this exclusion shall not apply to new development on property owned by a private person or
 3 entity and leased to the City;

4 (ii) Open recreation/horticulture, as defined in Section 209.5 of this
 5 Code, including private noncommercial recreation open use, as referred to in Section 221(g)
 6 of this Code;

7 (iii) Vehicle storage and access, as defined in Section 209.7 of this
 8 Code;

9 (iv) ~~Automotive services, as defined in Section 223(l)-(v) of this Code, that are~~
 10 ~~in a new development;~~

11 ~~_____ (v) Wholesale storage of materials and equipment, as defined in Section 225 of~~
 12 ~~this Code;~~

13 ~~_____ (vi) Other Uses, as defined in Section 227(ac)-(ol), (n)-(o), and (q)-(r) of~~
 14 ~~this Code;~~

15 (b) Timing of Payment. Except for those Integrated PDR projects subject to
 16 Section 328 of this Code, the TIDF shall be paid prior to issuance of the first construction
 17 document, with an option for the project sponsor to defer payment until prior to issuance of the
 18 first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with
 19 Section 107A.13 of the San Francisco Building Code. Under no circumstances may any City
 20 official or agency, including the Port of San Francisco, issue a certificate of final completion
 21 and occupancy for any new development subject to the TIDF until the TIDF has been paid;

22 (c) Calculation of TIDF. The TIDF shall be calculated on the basis of the number
 23 of gross square feet of new development, multiplied by the square foot rate in effect at the time
 24 of building or site permit issuance for each of the applicable economic activity categories
 25 within the new development, as provided in Subsection 411.3(e) below. An accessory use

1 shall be charged at the same rate as the underlying use to which it is accessory, except that
2 where the underlying use is exempt from the TIDF under this Section, the fee shall nonetheless be
3 charged for the accessory use unless such accessory use is otherwise exempt. Whenever any new
4 development or series of new developments cumulatively creates more than 3,000 gross
5 square feet of covered use within a structure, in the case of a building or site permit issued on or
6 before September 30, 2012, or more than 800 gross square feet of covered use within a structure, in the
7 case of a building or site permit issued on or after October 1, 2012, the TIDF shall be imposed on
8 every square foot of such covered use (including any portion that was part of prior new
9 development below the ~~3,000~~ square foot applicable threshold).

10 (d) Credits. In determining the number of gross square feet of use to which the
11 TIDF applies, the Department shall provide a credit for prior uses eliminated on the site. The
12 credit shall be calculated according to the following formula:

13 (1) There shall be a credit for the number of gross square feet of use being
14 eliminated by the new development, multiplied by an adjustment factor to reflect the difference
15 in the fee rate of the use being added and the use being eliminated. The adjustment factor
16 shall be determined by the Department as follows:

17 (A) The adjustment factor shall be a fraction, the numerator of which shall
18 be the fee rate which the Department shall determine, in consultation with the MTA, if
19 necessary, applies to the economic activity category in the most recent calculation of the TIDF
20 Schedule approved by the MTA Board of Supervisors for the prior use being eliminated by the
21 project.

22 (B) The denominator of the fraction shall be the fee rate for the use being
23 added, as set forth in the most recent calculation of the TIDF Schedule approved by the MTA
24 Board of Supervisors.

(2) A credit for a prior use may be given only if the prior was not abandoned as set forth in Sections 178(d), 183, 186.1(d) of this Code~~use was active on the site within five years before the date of the application for a building or site permit for the proposed use.~~

(3) As of September 4, 2004, no sponsor shall be entitled to a refund of the TIDF on a building for which the fee was paid under the former Chapter 38 of the San Francisco Administrative Code.

(4) Notwithstanding the foregoing, the adjustment factor shall not exceed one.

(e) TIDF Schedule. The TIDF Schedule shall be as follows:

Economic Activity Category <u>or Subcategory</u>	TIDF Per Gross Square Foot of Development
Cultural/Institution/Education	\$10.00
<u>Day Care/Community Center</u>	<u>\$13.30</u>
<u>Post-Secondary School</u>	<u>\$13.30</u>
<u>Museum</u>	<u>\$11.05</u>
<u>Other Institutional</u>	<u>\$13.30</u>
Management, Information and Professional Services	\$10.00 <u>12.64</u>
Medical and Health Services	\$10.00 <u>13.30</u>
Production/Distribution/Repair	\$8.00 <u>6.80</u>
Retail/Entertainment	\$10.00 <u>13.30</u>
Visitor Services	\$8.00 <u>12.64</u>

SEC. 411.4. IMPOSITION OF TIDF.

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1 (a) Determination of Requirements.

2 (1) Except for projects where the building or site permit was issued prior to July 1, 2010,

3 ~~The~~ Department shall determine the applicability of Section 411.1 et seq. to any development
4 project requiring a first construction document and, if Section 411.1 is applicable, shall impose
5 any TIDF owed as a condition of approval for issuance of the first construction document for
6 the development project. The project sponsor shall supply any information necessary to assist
7 the Department in this determination. The Zoning Administrator may seek the advice and
8 consent of the MTA regarding any interpretations that may affect implementation of this
9 section.

10 (2) For projects where the building or site permit was issued prior to July 1, 2010, the

11 applicability of Section 411.1 et seq. shall be determined by MTA in accordance with Section 411.7.

12 (b) Department Notice to Development Fee Collection Unit at DBI ~~and MTA~~ of
13 Requirements. After the Department or, in the case of a determination under Section 411.7, MTA,
14 has made its final determination regarding the application of the TIDF to a development
15 project under Section 411.1 et seq., it shall immediately notify the Development Fee
16 Collection Unit at DBI ~~and the Director of MTA~~ of any TIDF owed in addition to the other
17 information required by Section 402(b) of this Article. *If the MTA Director disputes the*
18 *Department's calculation, he or she shall promptly inform the Development Fee Collection Unit and*
19 *the MTA Director's determination shall prevail.*

20 (c) Process for Revisions of Determination of Requirements. In the event that the
21 Department or the Commission takes action affecting any development project subject to
22 Section 411.1 et seq. and such action is subsequently modified, superseded, vacated, or
23 reversed by the Board of Appeals, the Board of Supervisors, or by court action, the
24 procedures of Section 402(c) of this Article shall be followed.

1 SEC. 411.5. REVIEW OF TIDF SCHEDULE PRINCIPLES IN CALCULATING FEE.

2 ~~(a) Five Year Review.~~

3 ~~(1) Every five years, or more often as the MTA Board may deem necessary, the~~
 4 ~~Director of MTA shall prepare a report for the MTA Board and the Board of Supervisors with~~
 5 ~~recommendations regarding whether the TIDF for each economic activity category should be~~
 6 ~~increased, decreased, or remain the same. The Director of MTA shall coordinate this report with the~~
 7 ~~five year evaluation by the Director of Planning required by Section 410 of this Article.~~

8 ~~(2) In making such recommendations, and to the extent that new information is~~
 9 ~~available, the Director of MTA shall update the following information and estimates that were used in~~
 10 ~~the TIDF Study to calculate the base service standard fee rates, and any other information that the~~
 11 ~~Director deems appropriate.~~

12 ~~(A) The base service standard;~~

13 ~~(B) Capital and operating costs;~~

14 ~~(C) Federal and state grant funds received by MUNI;~~

15 ~~(D) Passenger fare revenue;~~

16 ~~(E) Daily revenue service hours;~~

17 ~~(F) Cost per revenue service hour;~~

18 ~~(G) Trip generation rates by economic activity category;~~

19 ~~(H) Cost per trip;~~

20 ~~(I) Cost per gross square foot of development by economic activity category;~~

21 ~~(J) Net present value factor;~~

22 ~~(K) Useful life period(s) for new development by economic activity category;~~

23 ~~(L) Estimated annual rate of return on the proceeds of the fee;~~

24 ~~(M) The placement of particular land uses in economic activity categories.~~

1 ~~Where applicable, the Director of MTA shall use the most recent MUNI information as~~
 2 ~~submitted to the National Transit Database. The denominator of the revised base service standard shall~~
 3 ~~be calculated using the most recent estimates of daily automobile and transit trips developed by the~~
 4 ~~Planning Department or other City or State agency.~~

5 ~~(3) In the report, the Director of MTA shall (1) identify the base service standard fee~~
 6 ~~rates per gross square foot in each economic activity category; and (2) propose a fee for each~~
 7 ~~economic activity category.~~

8 ~~(4) After receiving this report and making it available for public distribution, the Board~~
 9 ~~of Supervisors shall conduct a public hearing in which it shall consider the MTA Director's report,~~
 10 ~~hear testimony from any interested members of the public, and receive such other evidence as it may~~
 11 ~~deem necessary. At the conclusion of that hearing, the Board shall make findings regarding whether the~~
 12 ~~revenues projected to be recovered under the proposed Fee Schedule would be reasonably related to~~
 13 ~~and would not exceed the costs incurred by MUNI to maintain the applicable base service standard, in~~
 14 ~~light of demands caused by new development. The Board shall then make any necessary or appropriate~~
 15 ~~revisions to the TIDF Schedule.~~

16 ~~(5) The Board shall consider the MTA Director's report in light of the most recent five-~~
 17 ~~year review of development fees under Section 410 of this Article). MUNI and the Planning Department~~
 18 ~~shall make every effort to coordinate application of the TIDF with the City's other development fees to~~
 19 ~~avoid unnecessarily encumbering sponsors of new development.~~

20 ~~(b) Principles in Calculating Fee.~~ The following principles have been and shall in the
 21 future be observed in calculating the TIDF:

22 (1) Actual cost information provided to the National Transit Database shall be
 23 used in calculating the fee rates. Where estimates must be made, those estimates should be
 24 based on such information as the Director of *MTA Transportation* or his or her delegate
 25 considers reasonable for the purpose.

1 (2) The rates shall be set at an actuarially sound level to ensure that the
 2 proceeds, including such earnings as may be derived from investment of the proceeds and
 3 amortization thereof, do not exceed the capital and operating costs incurred in order to
 4 maintain the applicable base service standard in light of the demands created by new
 5 development subject to the fee over the estimated useful life of such new development. For
 6 purposes of this Section 411.1 et seq., and any Comprehensive Five Year Evaluation of the TIDF
 7 under Section 410, the estimated useful life of a new development is 45 years.

8
 9 ~~SEC. 411.7. RULES AND REGULATIONS.~~

10 ~~The MTA is empowered to adopt such rules, regulations, and administrative procedures as it~~
 11 ~~deems necessary to implement this Section 411.1 et seq. In the event of a conflict between any MTA~~
 12 ~~rule, regulation or procedure and this Section 411.1 et seq., this Section shall prevail.~~

13
 14 SEC. 411.7. IMPOSITION AND COLLECTION OF TIDF UNDER FORMER LAW.

15 (a) Where TIDF is owed to the City for new development for which a building or site permit
 16 was issued prior to July 1, 2010, the Director of Transportation shall be responsible for determining
 17 the amount of any TIDF due, and for providing written notification to the project sponsor of the amount
 18 due. This determination, including calculating the amount of the fee, and providing notification to the
 19 project sponsor shall be made in accordance with former San Francisco Administrative Code Chapter
 20 38 as it read on June 30, 2010, with the following exceptions:

21 (i) The fee shall be based on the TIDF rates in effect as of the date that the fee is or was due
 22 and payable;

23 (ii) Any payments of TIDF due shall be made to the DBI Development Fee Collection Unit
 24 in accordance with Section 402 of this Code and Section 107A.13 of the San Francisco Building
 25 Code; and

1 (iii) Any notification of the amount of TIDF due shall inform the project sponsor that the
2 sponsor may seek review of the TIDF determination in accordance with Section 404 of this Code and
3 Section 107A.13.9 of the San Francisco Building Code.

4 (b) Where the Director of Transportation determines that a development project
5 authorized under a building or site permit issued prior to July 1, 2010 is subject to TIDF, but that the
6 TIDF for the project is not yet due, the Director of Transportation shall make a preliminary
7 determination of the TIDF due, and shall provide this information to DBI. Where DBI has been
8 notified by MTA that TIDF is due on the project, DBI shall collect the TIDF prior to approving and
9 issuing any temporary certificate of occupancy or certificate of final completion for the project. The
10 project sponsor may seek review of the TIDF determination in accordance with paragraph (d) of this
11 Section.

12 (c) Where the Director of Transportation determines that a development project authorized
13 under a building or site permit issued prior to July 1, 2010 is subject to TIDF, but that no TIDF has
14 been paid, and that a temporary certificate of occupancy and/or certificate of final completion has
15 already been issued for the project, the Director of Transportation shall provide written notice to the
16 project sponsor of the determination of the amount of TIDF due and the date that payment is due. The
17 project sponsor may seek review of the TIDF determination in accordance with paragraph (d) of this
18 Section.

19 (d) Where a project sponsor seeks review of the Director of Transportation's determination
20 of the TIDF due under this Section, such review shall be conducted in accordance with Section 404 of
21 this Code and Section 107A.13.9 of the San Francisco Building Code. A determination by the Director
22 of Transportation of the TIDF due under this Section shall constitute a Project Fee Development
23 Report for purposes of these code provisions governing review and appeal.

1 (e) Following the Director of Transportation's issuance of a determination of TIDF due, the
2 subsequent payment of the fee, appeal, if any, and collection shall be in accordance with Sections 401
3 through 408 of this Code and Section 107A.13 of the San Francisco Building Code.

4
5 SEC. 411.8. CHARITABLE EXEMPTIONS

6 (a) The exemptions established by this Section shall be applicable only where a project
7 sponsor for a new development has filed an application for environmental evaluation, a categorical
8 exemption or a preliminary project assessment, or, for new development within the Mission Bay North
9 Project Area, the Mission Bay South Project Area, the Hunters Point Shipyard Project Area, the
10 Bayview Hunters Point Redevelopment Area, or the Transbay Redevelopment Project Area, the project
11 sponsor submits proof that the sponsor has submitted to the City as successor agency to the
12 Redevelopment Agency documentation comparable to that required for an application for
13 environmental evaluation, a categorical exemption or a preliminary project assessment for the project,
14 on or before October 1, 2012.

15 ~~(a)~~ When the property or a portion thereof will be exempt from real property
16 taxation or possessory interest taxation under California Constitution, Article XIII, Section 4,
17 as implemented by California Revenue and Taxation Code Section 214, then the sponsor
18 shall not be required to pay the TIDF attributed to the new development in the exempt
19 property or portion thereof, so long as the property or portion thereof continues to enjoy the
20 aforementioned exemption from real property taxation. This exemption from the TIDF shall not
21 apply to the extent that the non-profit organization is engaging in activities falling under the
22 Retail/Entertainment or Visitor Services economic activity categories in the new development
23 that would otherwise be subject to the TIDF.

24 ~~(b)~~ The TIDF shall be calculated for exempt structures in the same manner and at
25 the same time as for all other structures. Prior to issuance of a building or site permit for the

1 development project, the sponsor may apply to the MTA Department for an exemption under
2 the standards set forth in subsection (a) above. In the event the Agency Department determines
3 that the sponsor is entitled to an exemption under this Section, it shall cause to be recorded a
4 notice advising that the TIDF has been calculated and imposed upon the structure and that
5 the structure or a portion thereof has been exempted from payment of the fee but that if the
6 property or portion thereof loses its exempt status during the 10-year period commencing with
7 the date of the imposition of the TIDF, then the building owner shall be subject to the
8 requirement to pay the fee.

9 (ed) If within 10 years from the date of the issuance of the Certificate of Final
10 Completion and Occupancy, the exempt property or portion thereof loses its exempt status,
11 then the sponsor shall, within 90 days thereafter, be obligated to pay the TIDF, reduced by an
12 amount reflecting the duration of the charitable exempt status in relation to the useful life
13 estimate used in determining the TIDF for that structure. The amount remaining to be paid
14 shall be determined by recalculating the fee using a useful life equal to the useful life used in
15 the initial calculation minus the number of years during which the exempt status has been in
16 effect. After the TIDF has been paid, the Agency Department shall record a release of the notice
17 recorded under subsection (b) above.

18 (de) In the event a property owner fails to pay a fee within the 90-day period, a
19 notice for request of payment shall be served by the Development Fee Collection Unit at DBI
20 under Section 107A.13 of the San Francisco Building Code. Thereafter, upon nonpayment, a
21 lien proceeding shall be instituted under Section 408 of this Article and Section 107A.13.15 of
22 the San Francisco Building Code.

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24 Section 5. Effective Date. This ordinance shall become effective 30 days from the
25 date of passage.

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Section 6. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Name of Code here Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

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

By: 

DAVID A. GREENBURG
Deputy City Attorney



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

July 11, 2012

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

File No. 120532 [Planning Code - Transit Impact Development Fee Increase and Updates]

Small Business Commission Recommendation: **Approval with modification**

Dear Ms. Calvillo:

On June 11, 2012 the Small Business Commission held a hearing on Board of Supervisors File No. 120532 and voted 7-0 to recommend approval of the ordinance with modifications

Currently, under the Transit Impact Development Fee (TIDF), commercial spaces less than 3,000 gross square feet are not subject to the impact fee. As proposed, this ordinance will amend the TIDF to only exempt commercial spaces of less than 800 gross square feet. Additionally, a prior use credit currently applies for spaces subject to the TIDF. The prior use credit allows for reduced or waived impact fees when a prior use is considered during a previous five year period. After five years, the entire impact fee may apply. As proposed, this ordinance will amend the TIDF to tie the number of years that the prior use credit is available to existing sections of the Planning Code, which may decrease this number to three years in some situations. .

This impact fee will have a substantial impact on low to middle income revenue generating small businesses. For example, a new 2,500 foot childcare center that is considered a change of use under the ordinance (for example converting from a closed conditionally permitted restaurant) and does not qualify for a prior use credit may be subject to over \$30,000 in impact fees to open their business. The same fee applies for retail, restaurants, medical and health services and several other uses. Even a PDR business of the same size may face an impact fee of \$17,000 to open their business. These dollar amounts are enough to prevent a potential business from opening, leading to a missed opportunity to create jobs. This can also exasperate the issue of vacant and blighted buildings that are waiting for tenants to occupy them, which can counter the goals and objectives in the "Invest in Neighborhoods" project where economic development is a key objective. This fee may also be applied in addition to other impact fees, such as in the Eastern Neighborhoods.

The SBC recognizes that the Planning Department, Municipal Transit Authority and other stakeholders are currently working to transition the TIDF into a new "Transit Sustainability Fee" (TSF). The preference of the Commission, and primary recommendation, is to keep the above TIDF thresholds at their current levels while the TSF moves through the legislative and environmental review process. The



SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS



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Commission recommends therefore, that the 3,000 square foot exemption threshold remain in effect and that the 5 year prior use credit provision continue as well. The current thresholds have minimized this impact fees affects to small businesses and without amending the ordinance, there is a risk that a number of new small businesses will be affected by the fee.

The current TSF proposal includes a small business policy credit which will, as drafted, exempt, “Businesses that occupy or expand any pre-existing commercial space, provided that: (i) the gross square footage of such commercial space is not greater than 5,000 square feet, and (ii) the business is not formula retail.” Should the Board of Supervisors not accept the primary SBC recommendations above and retain the currently proposed square footage and/or prior use credit levels, then the Small Business Commission makes a secondary recommendation that this ordinance be amended to include this policy credit.

Moving forward with one of the alternatives presented above is a critical policy objective of the Small Business Commission. Returning to the example of a childcare center, the Office of Small Business’s Small Business Assistance Center sees a number of clients who seek to start these businesses. Often immigrant entrepreneurs starting their first business, spending \$30,000 or more on impact fees is a barrier to entry. Additionally, business owners are often not aware of impact fees in advance of signing leases and are placed with the choice of breaking a legal lease or paying the fee, which is due before occupancy. Should the square footage threshold be reduced and a policy credit program not be implemented, then there is a likelihood that this little known fee will begin to be charged to an increased number of small businesses.

The Commission recognizes that the TSF, through the policy credit program, takes steps forward to insulate small businesses from this impact fee. In its current form, this ordinance takes a step backwards. This does not make good public policy and therefore, accepting one of the above recommendations is necessary to move the current TIDF fee forwards in a way that is consistent with the proposed TSF policies.

Sincerely,

Regina Dick-Endrizzi
Director, Office of Small Business

Cc: Supervisors Wiener, Olague
Jason Elliott, Mayor’s Office
Gillian Gillett, Mayor’s Office
Alicia John-Baptiste, Planning Department