SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Amendment
HEARING DATE: DECEMBER 16, 2010

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Project Name:	**Development Impact and In-Lieu Fees**
Case Number:	2010.1025T
Initiated by:	Mayor Newsom (BOS File No. pending) 101523
Initiated:	December 7, 2010
Staff Contact:	AnMarie Rodgers, Manager of Legislative Affairs anmarie.rodgers@sfgov.org, (415) 558-6395
90-day Deadline:	March 7, 2011
Recommendation:	**Approval**

The action before the Commission is approval of code amendments introduced by the Mayor's Office on December 7, 2010.

CODE AMENDMENT

The proposed Ordinance amends multiple sections of Article 4 to clarify language, eliminate confusion as to when requirements must be met, increase consistency between the way impact fees are administered, and correct errors in cross-referencing. It also amends Section 409 to remove ambiguities regarding the process for adjusting impact fees to reflect inflation.

The Way It Is Now:

- City Ordinance 108-10 ("Development Impact and In-Lieu Fees") moved those sections of the Code dealing with impact fees into a new Article 4 of the Planning Code, and created a single set of definitions to apply to these sections. However, the terminology used in these sections was not completely updated to be consistent across these sections.
- The mechanism for updating the Annual Infrastructure Cost Inflation Adjustments (Section 409) currently contains ambiguity about how this process should occur – it is not clear if the Controller's Office can adjust impact fees or if a subsequent approval is needed.

The Way It Would Be:

- Sections of Article 4 amended to utilize consistent terminology, in keeping with language adopted as part of City Ordinance 108-10.
- Section 409 would be amended to clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees authorized by the section can be implemented by the Controller's Office without further approval's necessary, and that this adjustment is based *solely*

on the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator's Capital Planning Group.

- Section 409 would be further amended to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts.

REQUIRED COMMISSION ACTION

The proposed Resolution is before the Commission so that it may recommend approval or disapproval of Planning Code amendments.

RECOMMENDATION

The Department recommends that the Commission recommend a*pproval* of the proposed Ordinance and adopt the attached Draft Resolution to that effect.

BASIS FOR RECOMMENDATION

The majority of these changes are technical corrections that improve the readability and ease of application of the Code. With regards to the change to Section 409, these are at the request of the Controller's Office, which was concerned about the ambiguity in the existing legislation. The clarification supports the simplification of the process of updating impact fees, and provides more certainty that these adjustments will happen in a reasonable and timely fashion.

ENVIRONMENTAL REVIEW

The proposal to amend the Planning Code would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received no letters regarding this legislation.

RECOMMENDATION:	**Approval**

Attachments

Exhibit A: Draft Planning Commission Resolution to approve the Draft Ordinance
Exhibit B: Draft Ordinance

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Planning Commission Resolution No. _____

HEARING DATE: DECEMBER 16, 2010

Planning Code Amendment

HEARING DATE: DECEMBER 16, 2010

Project Name:	**Development Impact and In-Lieu Fees**
Case Number:	2010.1092T
Initiated by:	Mayor Newsom (BOS File No. pending)
Initiated:	December 7, 2010
Staff Contact:	AnMarie Rodgers, Manager of Legislative Affairs anmarie.rodgers@sfgov.org, (415) 558-6395
90-day Deadline:	March 7, 2011
Recommendation:	**Approval**

APPROVING AMENDMENTS TO THE PLANNING CODE TO AMEND MULTIPLE SECTIONS OF ARTICLE 4 TO CLARIFY LANGUAGE, ELIMINATE CONFUSION AS TO WHEN REQUIREMENTS MUST BE MET, INCREASE CONSISTENCY BETWEEN THE WAY IMPACT FEES ARE ADMINISTERED, CORRECT ERRORS IN CROSS-REFERENCING, AND AMEND SECTION 409 TO STREAMLINE THE PROCESS OF ADJUSTING IMPACT FEES TO REFLECT INFLATION.

PREAMBLE

WHEREAS, Ordinance No. 108-10, adopted by the Board of Supervisors on May 17, 2010, moved those sections of the Code dealing with impact fees into a new Article 4 of the Planning Code; and

WHEREAS, the terminology used in the new Article 4 was not completely updated to create consistency across these sections; and

WHEREAS, this inconsistency creates ambiguity and makes the Code less easy to implement; and

WHEREAS, the proposed legislation is intended to resolve the aforementioned issues; and

WHEREAS, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting to
consider the proposed Ordinance on December 16, 2010; and

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); 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 Department staff and other interested parties; and

WHEREAS, the all 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:

MOVED,

that the Commission hereby recommends that the Board of Supervisors recommends approval of the proposed Ordinance and adopts this Resolution to that effect.

I hereby certify that the foregoing Resolution was ADOPTED by the San Francisco Planning Commission on December 16, 2010.

Linda D. Avery
Commission Secretary

AYES:

NOES:

ABSENT:

DATE:

FILE NO.

LEGISLATIVE DIGEST

[Planning Code Amendments – Development Impact and In-Lieu Fees]

Ordinance amending the San Francisco Planning Code by amending Section 409 to clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees authorized by the section do not need further action by the Board of Supervisors, to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts, and by amending other sections of Article 4 to clarify language, eliminate confusion as to when requirements must be met, and correct errors in cross-referencing; amending the San Francisco Administrative Code by repealing Section 38.14 (the Severability Clause) and moving it to Section 430; adopting environmental, Planning Code Section 302, and Planning Code Section 101.1 findings.

Existing Law

Article 4 of the Planning Code contains San Francisco's requirements for development impact fees. It also contains requirements for a project sponsor to provide physical improvements, facilities, or below market rate housing units ("development impact requirements"), and the option to pay a fee in lieu of complying with a development impact requirement. These requirements are imposed by the Planning Commission as a condition of approval of the development project, and must be complied with prior to issuance of the first building permit or, in the case of a site permit, the first building permit addendum or other document that authorizes construction of the project unless the project sponsor elects to defer payment of a portion of the fees to prior to issuance of the first certificate of occupancy.

Section 409 requires the Controller's Office to issue annual reports providing certain information on development impact fees and development impact requirements and authorizes the Controller to make inflation adjustments to the fees every year based on the Annual Infrastructure Construction Cost Inflation Estimate published by the City Administrator's Capital Planning Group and approved by the City's Capital Planning Committee.

Amendments to Current Law

The proposed legislation amends Section 409 to clarify that the Controller's Annual Infrastructure Cost Inflation Adjustments to development fees do not need further action by the Board of Supervisors, to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts.

Because compliance with development fee or development impact requirements may not be required until prior to issuance of the first construction document (in the case of a site permit) or to prior to issuance of the first certificate of occupancy (if the project sponsor elects the deferral option), each development fee or development impact requirement section is amended to clarify that the requirements are not imposed as a condition of approval on the building or site permit but rather are imposed as a condition of approval of the development project. Additional amendments to these sections, and other sections of Article 4, are made in order to standardize language or to correct errors in cross-referencing. The Severability Clause in the former Chapter 38 of the Administrative Code, which is the only section still remaining in that Chapter, has been repealed and moved to Section 430 of the Planning Code.

FILE NO. ORDINANCE NO.

[Planning Code Amendments – Development Impact and In-Lieu Fees]

Ordinance amending the San Francisco Planning Code by amending Section 409 to clarify that the Annual Infrastructure Cost Inflation Adjustments to development fees authorized by the section do not need further action by the Board of Supervisors, to provide that the Planning Director be included in the annual fee reporting process, and to make other technical amendments to simplify the annual fee reporting process and ensure that the Controller's Office and the Capital Planning Program coordinate their efforts, and by amending other sections of Article 4 to clarify language, eliminate confusion as to when requirements must be met, and correct errors in cross-referencing; amending the San Francisco Administrative Code by repealing Section 38.14 (the Severability Clause) and moving it to Section 430; adopting environmental, Planning Code Section 302, and Planning Code Section 101.1 findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Findings. The Board of Supervisors hereby finds that:

(1) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Section 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.

(2) Pursuant to Section 302 of the Planning Code, the Board finds that this ordinance 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 Planning Commission Resolution No. _____ is on file with the Clerk of the Board of Supervisors in File No. _____.

(3) This ordinance is in conformity with the General Plan and the Priority Policies of Planning Code Section 101.1 for the reasons set forth n Planning Commission Resolution No. _____ and the Board incorporates such reasons herein by reference.

Section 2. The San Francisco Planning Code is hereby amended by amending Sections 402, 403, 409, 411.3, 411.4, 412.4, 413.4, 4.14.4, 414.10, 414.15, 416.3, 417.4, 418.4, 419.2, 419.3, 419.4, 419.5, 420, 420.4, 420.5, 421.4, 422.4, 423.4, 424.3, and adding Section 430, to read as follows:

SEC. 402. PROCEDURE FOR PAYMENT AND COLLECTION OF DEVELOPMENT FEES.

(a) **Collection by the Development Fee Collection Unit.** All development impact and in-lieu fees authorized by this Code shall be collected by the Development Fee Collection Unit at DBI in accordance with Section 107A.13 of the San Francisco Building Code.

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

(1) **Required Notice.** When the Planning Department determines that a development project is subject to one or more development fees or development impact requirements, but in any case no later than prior to issuance of the building or site permit for a development project, the Department shall send written or electronic notification to the Development Fee Collection Unit at DBI, and also to MOH, MTA or other applicable agency that administers an applicable development fee or development impact requirement, that: (i) identifies the development project, (ii) lists which specific development fees and/or development impact requirements are applicable and the legal authorization for their application, (iii) specifies the dollar amount of the development fee or fees that the

Department calculates is owed to the City or that the project sponsor has elected to satisfy a development impact requirement through the provision of physical or "in-kind" improvements, and (iv) lists the name and contact information for the staff person at each agency or department responsible for calculating the development fee or monitoring compliance with the development impact requirement for physical or in-kind improvements.

(2) **Amended Notices.** The Department shall send an amended notice to the Development Fee Collection Unit, and also to any department or agency that received the initial notice, if at any time subsequent to its initial notice: (i) any of the information required by subsection (1) above is changed or modified, or (ii) the development project is modified by the Department or Commission during its review of the project and the modifications change the dollar amount of the development fee or the scope of any development impact requirement.

(3) **Optional Recordation of Notice of Special Restrictions Prior to Issuance of Building or Site Permit.** Prior to issuance of a building or site permit for a development project subject to a development fee or development impact requirement, the Department may request the Development Fee Collection Unit to record a notice with the County Recorder that a development project is subject to a development fee or development impact requirement. The County Recorder shall serve or mail a copy of such notice to the persons liable for payment of the fee or satisfaction of the requirement and the owners of the real property described in the notice. The notice shall include (i) a description of the real property subject to the development fee or development impact requirement, (ii) a statement that the development project is subject to the imposition of the development fee or development impact requirement, and (iii) a statement that the dollar amount of the fee or the specific development impact requirement to which the project is subject has been determined under Article 4 of this Code and citing the applicable section number.

(c) **Process for Revisions of Determination of Development Impact Fee(s) or Development Impact Requirement(s).** In the event that the Department or the Commission takes action affecting any development project subject to this Article and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the building permit or building permit application for such development project shall be remanded to the Department to determine whether the development project has been changed in a manner which affects the calculation of the amount of development fees or development impact requirements required under this Article and, if so, the Department shall revise the requirement imposed on the permit application in compliance with this Article within 30 days of such remand and notify the project sponsor in writing of such revision or that a revision is not required. The Department shall notify the Development Fee Collection Unit at DBI if the revision materially affects the development fee requirements originally imposed under this Article so that the Development Fee Collection Unit update the Project Development Fee Report and re-issue the associated building or site permit for the project, if necessary, to ensure that any revised development fees or development impact requirements are enforced.

SEC. 403. PAYMENT OF DEVELOPMENT FEE(S) OR SATISFACTION OF DEVELOPMENT IMPACT REQUIREMENT(S) AS A CONDITION OF APPROVAL *~~FOR ISSUANCE OF BUILDING OR SITE PERMIT~~*; PLANNING COMMISSION REVIEW; RECOMMENDATION CONCERNING EFFECTIVENESS OF FEE DEFERRAL PROGRAM.

(a) **Condition of Approval.** In addition to any other condition of approval that may otherwise be applicable, the Department or Commission shall require as a condition of approval of *~~any building or site permit for~~* a development project subject to a development fee or development impact requirement under this Article that such development fee or fees be paid prior to the issuance of the first construction document for the development project, with

an option for the project sponsor to defer payment of 85 percent of the fees, or 80 percent of the fees if the project is subject to a neighborhood infrastructure impact development fee, to prior to issuance of the first certificate of occupancy upon agreeing to pay a Development Fee Deferral Surcharge on the amount owed, as provided by Section 107A.13.3 of the San Francisco Building Code ("Fee Deferral Program"). The Department or Commission shall also require as a condition of approval that any development impact requirement imposed on a development project under this Article shall be satisfied prior to issuance of the first certificate of occupancy for the development project.

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

SEC. 409. ANNUAL CITYWIDE DEVELOPMENT FEE REPORTING REQUIREMENTS.

(a) **Annual Citywide Development Fee and Development Impact Requirements Report.** In coordination with the Development Fee Collection Unit at DBI *and the Planning Director*, the Controller shall issue a report within 180 days after the end of each fiscal year, that provides information on all development fees collected during the prior fiscal year organized by development fee account and all cumulative monies collected over the life of each development fee account, as well as all monies expended. The report shall also provide information on the number of projects that elected to satisfy development impact requirements

through the provision of "in-kind" physical improvements, including on-site and off-site BMR units, instead of paying development fees. The report shall also include any annual reporting information otherwise required pursuant to the California Mitigation Fee Act, Government Code 66001 et seq. The report shall be presented *by the Planning Director* to the Planning Commission and to the Land Use & Economic Development Committee of the Board of Supervisors. The Report shall also contain ~~*recommendations for*~~ *information on the Controller's* annual construction cost inflation adjustments to development fees~~,~~ described in subsection (b) below.

(b) **Annual Development Fee Infrastructure Construction Cost Inflation Adjustments.** ~~*In conjunction with*~~ *Prior to issuance of* the Annual Citywide Development Fee and Development Impact Requirements Report referenced in subsection (a) above, the Controller shall review the amount of each development fee established in this Article and shall adjust the dollar amount of any development fee on an annual basis *every January* based *solely* on the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator's Capital Planning Group and approved by the City's Capital Planning Committee *no later than December 1 every year, without further action by the Board of Supervisors*. The Annual Infrastructure Construction Cost Inflation Estimate shall be updated by the Capital Planning Group on an annual basis *and no later December 1 every year*, in consultation with the Capital Planning Committee, ~~*with the goal of*~~ *in order to* establish~~*ing*~~ a reasonable estimate of construction cost inflation for the next ~~*fiscal*~~ *calendar* year for a mix of public infrastructure and facilities in San Francisco. The Capital Planning Group may rely on past construction cost inflation data, market trends and a variety of national, state and local commercial and institutional construction cost inflation indices in developing their annual estimates for San Francisco. The Planning Department and the Development Fee Collection Unit at DBI shall provide notice of ~~*any*~~ *the Controller's proposed* development fee adjustments, including the

Annual Infrastructure Construction Cost Inflation Estimate formula used to calculate the adjustment, on ~~its~~ *the Planning Department and DBI* website and to any interested party who has requested such notice at least 30 days prior to the adjustment taking effect *each January*.

SEC. 411.3. APPLICATION OF TIDF.

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

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

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

(A) New development on property owned (including beneficially owned) by the City, except for that portion of the new development that may be developed by a private sponsor and not intended to be occupied by the City or other agency or entity exempted under Section 411.1 et seq., in which case the TIDF shall apply only to such non-exempted portion. New development on property owned by a private person or entity and leased to the City shall be subject to the fee, unless the City is the beneficial owner of such new development or unless such new development is otherwise exempted under this Section.

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

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

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

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

(F) The following types of new developments:

(i) Public facilities/utilities, as defined in Section 209.6 of this Code;

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

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

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

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

(vi) Other Uses, as defined in Section 227(a)—(q) and (s)—(t) of this Code;

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

(c) **Calculation of TIDF.** The TIDF shall be calculated on the basis of the number of square feet of new development, multiplied by the square foot rate in effect at the time of building or site permit issuance for each of the applicable economic activity categories within the new development, as provided in Subsection 411.3(e) below. An accessory use shall be charged at the same rate as the underlying use to which it is accessory. Whenever any new development or series of new developments cumulatively creates more than 3,000 gross square feet of covered use within a structure, the TIDF shall be imposed on every square foot of such covered use (including any portion that was part of prior new development below the 3,000 square foot threshold).

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

(1) There shall be a credit for the number of gross square feet of use being eliminated by the new development, multiplied by an adjustment factor to reflect the difference

in the fee rate of the use being added and the use being eliminated. The adjustment factor shall be determined by the Department as follows:

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

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

(2) A credit for a 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.

(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.**

~~*(1)*~~ The TIDF Schedule shall be as follows:

Economic Activity Category	TIDF Per Gross Square Foot of Development
Cultural/Institution/Education	$10.00
Management, Information and Professional Services	$10.00
Medical and Health Services	$10.00
Production/Distribution/Repair	$8.00
Retail/Entertainment	$10.00
Visitor Services	$8.00

~~*(2) Biennial Adjustment. Biennially, beginning July 1, 2005, the TIDF Schedule shall be adjusted, without further action by the Board of Supervisors, to reflect the average annual change in the San Francisco Bay Area Consumer Price Index (CPI) for "All Urban Consumers" for the prior two years, as reported by the Association of Bay Area Governments, and as determined by the Director of MTA.*~~

SEC. 411.4. IMPOSITION OF TIDF.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 411.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 411.1 is applicable, shall impose any TIDF owed as a condition of approval for issuance of the *first construction document* ~~*building or site permit*~~ for the *development* project. The project sponsor shall supply any information necessary to assist the Department in this determination. The Zoning Administrator may seek the advice and consent of the MTA regarding any interpretations that may affect implementation of this section.

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

(c) **Process for Revisions of Determination of Requirements.** In the event that the Department or the Commission takes action affecting any development project subject to Section 411.1 et seq. and such action is subsequently modified, superseded, vacated, or

reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 412.4. IMPOSITION OF DOWNTOWN PARK FEE REQUIREMENT.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 412.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 412.1 et seq. is applicable, the number of gross square feet of office use subject to its requirements, and shall impose this requirement as a condition of approval for issuance of the ~~*first construction document* *building or site permit*~~ for the *development* project to address the need for additional public park and recreation facilities in the downtown districts. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) **Amount of Fee.** The amount of the fee shall be $2 per square foot of the net addition of gross floor area of office use to be constructed as set forth in the final approved building or site permit.

(c) **Department Notice to Development Fee Collection Unit at DBI.** After the Department has made its final determination of the net addition of gross floor area of office use subject to Section 412.1 et seq. and the dollar amount of the Downtown Park Fee required, the Department shall immediately notify the Development Fee Collection Unit at DBI of its determination, in addition to the other information required by Section 402(b) of this Article.

(d) **Process for Revisions of Determination of Requirement.** In the event that the Department or the Commission takes action affecting any development project subject to Section 412.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 413.4. IMPOSITION OF HOUSING REQUIREMENT.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 413.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~, and if Section 413.1 et seq. is applicable, the number of gross square feet of each type of space subject to its requirements, and shall impose these requirements as a condition of approval for issuance of the *first construction document* ~~*building*~~ for the development project to mitigate the impact on the availability of housing which will be caused by the employment facilitated by the development project. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) ***Department*** **Notice to Development Fee Collection Unit** ***at DBI*** ~~***of Requirements***~~**.** After the Department has made its final determination of the net addition of gross square feet of each type of space subject to Section 413.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its determination in addition to the other information required by Section 402(b) of this Article.

(c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or site permit for a development project subject to the requirements of Section 413.1 et seq., the sponsor shall elect one of the three options listed below to fulfill any requirements imposed as a condition of approval and notify the Department of their choice of the following:

(1) Contribute of a sum or land of value at least equivalent to the in-lieu fee, according to the formulas set forth in Section 413.6, to one or more housing developers who will use the funds or land to construct housing units pursuant to Section 413.5; or

(2) Pay an in-lieu fee to the Development Fee Collection Unit at DBI according to the formula set forth in Section 413.6; or

(3) Combine the above options pursuant to Section 413.8.

(d) **Department's Notice to Development Fee Collection Unit of Sponsor's Choice.** After the project sponsor has notified the Department of the choice to fulfill the requirements of Section 413.1 et seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the project sponsor's choice.

(e) **Development Fee Collection Unit Notice to Department Prior to Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 413.1 et seq. that has elected to fulfill all or part of the requirements with an option other than payment of an in-lieu fee. If the Department notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 413.1 et seq.

~~(e)~~ *(f)* **Process for Revisions of Determination of Requirements.** In the event that the Department or the Commission takes action affecting any development project subject to Section 413.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) shall be followed.

SEC. 413.8. COMPLIANCE BY COMBINATION OF PAYMENT TO HOUSING DEVELOPER AND PAYMENT OF IN-LIEU FEE.

With the written approval of the Director of MOH, the sponsor of a development project subject to Section 413.1 et seq. may elect to satisfy its housing requirement by a combination of paying money or contributing land to one or more housing developers under Section 413.5 and paying a partial amount of the in-lieu fee to the Development Fee Collection Unit at DBI under Section 413.6. In the case of such election, the sponsor must pay a sum such that each gross square foot of net addition of each type of space subject to Section 413.1 et seq. is

accounted for in either the payment of a sum or contribution of land to one or more housing developers or the payment of a fee to the Development Fee Collection Unit. The housing units constructed by a housing developer must conform to all requirements of Section 413.1 et seq., including, but not limited to, the proportion that must be affordable to qualifying households as set forth in Section 413.5. All of the requirements of Sections 413.5 and 413.6 shall apply, including the requirements with respect to the timing of issuance of site and building permits, *first construction documents*, and certificates of occupancy for the development project and payment of the in-lieu fee.

SEC. 414.4. IMPOSITION OF CHILD CARE REQUIREMENT.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 414.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 414.1 is applicable, the number of gross square feet of each type of space subject to its requirements, and shall impose these requirements as a condition of approval for issuance of the *first construction document* ~~*building or site permit*~~ for the development project to mitigate the impact on the availability of child-care facilities which will be caused by the employees attracted to the proposed development project. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) ***Department*** **Notice to Development Fee Collection Unit at DBI** ~~***of Requirements***~~**.** After the Department has made its final determination of the net addition of gross square feet of each type of space subject to Section 414.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its determination in addition to the other information required by Section 402(b) of this Article.

(c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or site permit for a development project subject to the requirements of Section 414.1 et seq., the

sponsor shall elect one of the six options listed below to fulfill any requirements imposed as a condition of approval and notify the Department of their choice of the following:

(1) Provide a child-care facility on the premises of the development project for the life of the project pursuant to Section 414.5; or

(2) In conjunction with the sponsors or one or more other development projects subject to Section 414.1 et seq. located within l/2 mile of one another, provide a single child-care facility on the premises of one of their development projects for the life of the project as set forth in Section 414.6; or

(3) Either singly or in conjunction with the sponsors or one or more other development projects subject to Section 414.1 et seq. located within ½ mile of one another, provide a single child-care facility to be located within one mile of the development project(s) pursuant to Section 414.7; or

(4) Pay an in-lieu fee to the Development Fee Collection Unit at DBI pursuant to Section 414.8; or

(5) Combine payment of an in-lieu fee to the Child Care Capital Fund with construction of a child-care facility on the premises or providing child-care facilities near the premises, either singly or in conjunction with other sponsors pursuant to Section 414.9; or

(6) Enter into an arrangement pursuant to which a nonprofit organization shall provide a child-care facility at a site within the City pursuant to Section 414.10.

(d) **Department Notice to Development Fee Collection Unit of Sponsor's Choice.** After the project sponsor has notified the Department of their choice to fulfill the requirements of Section 414.1 et seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the sponsor's choice.

(e) **Development Fee Collection Unit Notice to Department Prior to Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall

provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 414.1 et seq. that has elected to fulfill all or part of its requirement with an option other than payment of an in-lieu fee. If the Department notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 414.1 et seq.

(f) **Process for Revisions of Determination of Requirements.** In the event that the Department or Commission takes action affecting any development project subject to Section 414.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 414.10. COMPLIANCE BY ENTERING INTO AN ARRANGEMENT WITH A NON-PROFIT ORGANIZATION.

The sponsor of a development project subject to this Section may elect to satisfy its child-care requirement by entering into an arrangement pursuant to which a nonprofit organization will provide a child-care facility at a site within the City. The sponsor shall, prior to the issuance of the first certificate of occupancy by the Director of DBI for the development project, provide proof to the Director of Planning that:

(a) A space for a child-care facility has been provided by the nonprofit organization, either for its own use if the organization will provide child-care services, or to a nonprofit child-care provider without charge for rent, utilities, property taxes, building services, repairs, or any other charges of any nature, as evidenced by a lease or sublease and an operating agreement between the nonprofit organization and the provider with minimum terms of three years;

(b) The child-care facility is a licensed child-care facility;

(c) The child-care facility has a minimum gross floor area of 3,000 square feet or an area determined according to the following formula, whichever is greater:

Net add. gross sq. ft. office or hotel space × .01 = sq. ft. of child-care facility

In the event that the net addition of gross square feet of office or hotel space is less than 300,000 square feet, the child-care facility may have a minimum gross floor of 2,000 square feet or the area determined according to the above formula, whichever is greater;

(d) The nonprofit organization has executed and recorded a binding written agreement, with a term of 20 years from the date of issuance of the first certificate of occupancy for the development project, pursuant to which the nonprofit organization guarantees that it will operate a child-care facility or it will lease or sublease a child-care facility to one or more nonprofit child-care providers for as long as there is a demonstrated need under Section 414.12, and that it will comply with all of the requirements imposed on the nonprofit organization under Section 414.10 and imposed on a sponsor under Sections 414.4.

(e) To support the provision of a child-care facility in accordance with the foregoing requirements, the sponsor has paid to the nonprofit organization a sum which equals or exceeds the amount of the in-lieu fee which would have been applicable to the project under Section *414.8* ~~*414.4(b)(4)*~~.

(f) The Department of Children, Youth and Their Families has determined that the proposed child-care facility will help meet the needs identified in the San Francisco Child Care Needs Assessment and will be consistent with the City Wide Child Care Plan; provided, however, that this Paragraph *(f)* ~~*(F)*~~ shall not apply to any office or hotel development project approved by the Planning Commission prior to December 31, 1999.

Upon compliance with the requirements of this Section, the nonprofit organization shall enjoy all of the rights and be subject to all of the obligations of the sponsor, and the sponsor shall have no further rights or obligations under Section 414.1 et seq.

SEC. 414.14. CHILD CARE CAPITAL FUND.

There is hereby established a separate fund set aside for a special purpose called the Child Care Capital Fund ("Fund"). All monies contributed pursuant to the provisions of Section 414.1 et seq., and all other monies from the City's General Fund or from contributions from third parties designated for the fund shall be deposited in the Fund. All monies in the fund shall be used solely to increase and/or improve the supply of child care facilities affordable to households of low and moderate income; except that monies from the fund shall be used by the Director to fund in a timely manner any nexus study required to demonstrate the relationship between commercial development projects and child care demand as described in Section *414.1* ~~*414.4*~~. The Fund shall be administered by the Director, who shall adopt rules and regulations governing the disposition of the Fund which are consistent with Section 414.1 et seq. Such rules and regulations shall be subject to approval by resolution of the Board of Supervisors.

SEC. 414.15. DECREASE IN CHILD CARE FORMULAE AFTER STUDY.

If the Commission determines after review of an empirical study that the formulae set forth in Section*s* ~~*414.4*~~ *414.5 through 414.9* impose a greater requirement for child care facilities than is necessary to provide child care for the number of employees attracted to office and hotel development projects subject to Section 414.1 et seq., the Commission shall, within three years of making such determination, refund that portion of any fee paid or permit a reduction of the space dedicated for child care by a sponsor consistent with the conclusions of such study. The Commission shall adjust any sponsor's requirement and the formulae set forth in Section*s* ~~*414.4*~~ *414.5 through 414.9* so that the amount of the exaction is set at the level necessary to provide child care for the employees attracted to office and hotel development projects subject to Section 414.1 et seq.

SEC. 416.3. APPLICATION OF AFFORDABLE HOUSING REQUIREMENT.

The requirements of Sections 415.1 through 415.9 shall apply in the Market and Octavia Plan Area in addition to the following additional affordable housing requirement:

(a) **Amount of Fee.** ~~:~~ All development projects that have not received Department or Commission approval as of the effective date of May 30, 2008 and that are subject to the Residential Inclusionary Affordable Housing Program shall pay an additional affordable housing fee per the fee schedule in Table 416.3A.

TABLE 416.3A

AFFORDABLE HOUSING FEE SCHEDULE IN THE MARKET AND OCTAVIA PROGRAM AREA

	Van Ness and Market Special Use District	NCT	RTO
Net addition of residential use or change of use to residential use	$7.20/gross square foot	$3.60/ gross square foot	$0.00/ gross square foot
Replacement of, or change of use from, non-residential to residential use	$3.80/ gross square foot	$0.20/ gross square foot	$0.00/ gross square foot
Replacement of, or change of use from, PDR to residential use	$5.50/ gross square foot	$1.90/ gross square foot	$0.00/ gross square foot

(b) **Other Fee Provisions.** This additional affordable housing fee shall be subject to the inflation adjustment provisions of Section 409 and the waiver and reduction provisions of Section *406* ~~*421.4*~~. This additional affordable housing fee may not be met through the in-kind

provision of community improvements or Community Facilities (Mello Roos) financing options of Sections ~~*426.3*~~ *421.3(d) and* (e) ~~*and (f)*~~.

(c) **Exemption for Affordable Housing.** A project applicant shall not pay a supplemental affordable housing fee for any square foot of space designated as a below market rate unit under Section 415.1 et seq., the Citywide Inclusionary Affordable Housing Program, or any other residential unit that is designated as an affordable housing unit under a Federal, State, or local restriction in a manner that maintains affordability for a term no less than 50 years.

(d) **Timing of Payment.** The Market and Octavia Plan Area Affordable Housing Fee shall be paid before the City issues a first construction document, with an option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San Francisco Building Code.

SEC. 417.4. IMPOSITION OF AFFORDABLE HOUSING REQUIREMENT.

Determination of Requirements. The Department shall determine the applicability of Section 417.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 417.1 et seq. is applicable, shall impose any such requirements as a condition of approval for issuance of the *first construction document for* ~~*building or site permit*~~ *the development project.* The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) Department Notice to Development Fee Collection Unit *at DBI* ~~***of Fee Requirements***~~**.** After the Department has made its final determination regarding the application of the affordable housing requirements to a development project pursuant to Section 417.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of the applicable

affordable housing fee amount in addition to the other information required by Section 402(b) of this Article.

(c) Process for Revisions of Determination of Requirements. In the event that the Department or the Commission takes action affecting any development project subject to Section 417.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) shall be followed.

SEC. 418.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE AND SOMA STABILIZATION FEE.

(a) **Determination of Requirements.** The Department or Commission shall determine the applicability of Section 418.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 418.1 et seq. is applicable, the amount of Community Infrastructure Impact and SOMA Stabilization Fees required and shall impose these requirements as a condition of approval for issuance of the *first construction document* ~~*building or site permit*~~ for the development project. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) **Department's Notice to Development Fee Collection Unit *at DBI*** ~~***of Requirements***~~**.** Prior to issuance of a building or site permit for a development project subject to the requirements of Section 418.1 et seq., the Department shall notify the Development Fee Collection Unit at DBI of its final determination of the amount of Community Infrastructure and SOMA Stabilization Fees required, including any fee credits for in-kind improvements, in addition to the other information required by Section 402(b) of this Article.

(c) **Development Fee Collection Unit's Notice to Department Prior to Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing and electronically to the Department prior to issuing the first certificate

of occupancy for any development project subject to Section 418.1 et seq. that has elected to fulfill all or part of the requirement with an In-Kind Improvement Agreement. If the Department notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 418.1 et seq.

(d) ***Process for Revisions of Determination of Requirements.*** In the event that the Department or the Commission takes action affecting any development project subject to Section 418.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) shall be followed.

SEC. 419.2. DEFINITIONS. (a) In addition to the definitions set forth in Section 401 of this Article:

(1) "Rental Housing Project" shall mean a project consisting solely of rental housing units, as defined in Section *401* ~~*415.1(37)*~~ that meets the following requirements:

(A) The units shall be rental housing for not less than 30 years from the issuance of the certificate of occupancy pursuant to an agreement between the developer and the City. This agreement shall be in accordance with applicable State law governing rental housing;

(B) A Notice of Special Restrictions (NSR), with the City as a third party beneficiary and subject to written approval of the Director, shall be recorded on the title of the property prior to final map approval containing the terms of the agreement described above in subsection (1). Once the agreement is recorded against the property, the NSR shall terminate.

(2) "Tier A." Sites within the UMU which do not receive zoning changes that increase heights, as compared to allowable height prior to the rezoning (May 2008).

(3) "Tier B." Sites within the UMU which receive zoning changes that increase heights by one to two stories.

(4) "Tier C." Sites within the UMU which receive zoning changes that increase heights by three or more stories.

SEC. 419.3. APPLICATION OF UMU AFFORDABLE HOUSING REQUIREMENTS.

Section 419.1 et seq. shall apply to any housing project located in the UMU Zoning District of the Eastern Neighborhoods, that is subject to the requirements of Section*s* 415 et seq.

(b) Additional UMU Affordable Housing Requirements to the Section 415 Inclusionary Affordable Housing Program Requirements. The requirements of Section 415 through 415.9 shall apply subject to the following exceptions:

(1) For all projects sites designated as Tier A, a minimum of 18 percent of the total units constructed shall be affordable to and occupied by qualifying persons and families as defined elsewhere in this Code, so that a project sponsor must construct .18 times the total number of units produced in the principal project beginning with the construction of the fifth unit. If the total number of units is not a whole number, the sponsor shall round up to the nearest whole number for any portion of .5 or above.

(A) If the project sponsor *is eligible for and* elects pursuant to Section *415.5(g)* ~~*415.4(c)(2),*~~ to build off-site units to satisfy the requirements of this program, the sponsor shall construct 23 percent so that a sponsor must construct .23 times the total number of units produced in the principal project beginning with the construction of the fifth unit. If the total number of units is not a whole number, the sponsor shall round up to the nearest whole number for any portion of .5 or above.

(B) If the project sponsor elects pursuant to Section *415.5* ~~*415.4(c)(3)*~~ to pay ~~*an in lieu*~~ *the* fee to satisfy the requirements of this program, the sponsor shall meet the requirements of

Section 415 according to the number of units required above if the project applicant were to elect to meet the requirements of this Section by off-site housing development. For the purposes of this Section, the City shall calculate the fee using the direct fractional result of the total number of units multiplied by the percentage of off-site housing required, rather than rounding up the resulting figure ~~*as required by Section 415.6(a)*~~.

(2) For all project sites designated Tier B, a minimum of 20 percent of the total units constructed shall be affordable to and occupied by qualifying persons and families as defined elsewhere in this Code, so that a project sponsor must construct .20 times the total number of units produced in the principal project beginning with the construction of the fifth unit. If the total number of units is not a whole number, the sponsor shall round up to the nearest whole number for any portion of .5 or above.

(A) If the project sponsor *is eligible for and* elects pursuant to Section *415.5(g)* ~~*415.4(c)(2),*~~ to build off-site units to satisfy the requirements of this program, the sponsor shall construct 25 percent so that a sponsor must construct .25 times the total number of units produced in the principal project beginning with the construction of the fifth unit. If the total number of units is not a whole number, the sponsor shall round up to the nearest whole number for any portion of .5 or above.

(B) If the project sponsor elects pursuant to Section *415.5(g)* ~~*415.4(c)(3)*~~ to pay ~~*an in-lieu*~~ *the* fee to satisfy the requirements of this program, the sponsor shall meet the requirements of Section 415 according to the number of units required above if the sponsor were to elect to meet the requirements of this Section by off-site housing development. For the purposes of this Section, the City shall calculate the fee using the direct fractional result of the total number of units multiplied by the percentage of off-site housing required, rather than rounding up the resulting figure ~~*as required by Section 415.6(a)*~~.

(3) For all project sites designated Tier C, a minimum of 22 percent of the total units constructed shall be affordable to and occupied by qualifying persons and families as defined elsewhere in this Code, so that a project sponsor must construct .22 times the total number of units produced in the principal project beginning with the construction of the fifth unit. If the total number of units is not a whole number, the sponsor shall round up to the nearest whole number for any portion of .5 or above.

(A) If the project sponsor *is eligible for and* elects pursuant to Section *415.5(g)* ~~*415.4(c)(2),*~~ to build off-site units to satisfy the requirements of this program, the sponsor shall construct 27 percent so that a sponsor must construct .27 times the total number of units produced in the principal project beginning with the construction of the fifth unit. If the total number of units is not a whole number, the sponsor shall round up to the nearest whole number for any portion of .5 or above.

(B) If the project sponsor elects pursuant to Section *415.5* ~~*415.4(c)(3*~~) to pay ~~*an in-lieu*~~ *the* fee to satisfy the requirements of this program, the sponsor shall meet the requirements of Section 415 according to the number of units required above if the sponsor were to elect to meet the requirements of this Section by off-site housing development. For the purposes of this Section, the City shall calculate the fee using the direct fractional result of the total number of units multiplied by the percentage of off-site housing required, rather than rounding up the resulting figure ~~*as required by Section 415.6(a)*~~.

(c) Timing and Payment of Fee. Any fee required by Section 419.1 et seq. shall be paid to the Development Fee Collection Unit at DBI prior to issuance of the first construction document, with an option for the project sponsor to defer payment to prior to issuance of the first certificate of occupancy upon agreeing to pay a deferral surcharge in accordance with Section 107A.13.3 of the San Francisco Building Code.

SEC. 419.4. IMPOSITION OF UMU AFFORDABLE HOUSING REQUIREMENTS.

The Department shall determine the applicability of Section 419.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 419.1 et seq. is applicable, the additional affordable housing required pursuant to Section 419.1 et seq. and shall impose these requirements as condition on the approval for issuance of the *first construction document* ~~*building or site permit*~~ *for the development project*. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) **Notice to Development Fee Collection Unit *at DBI* ~~*of Requirements*~~.** After the Department has made its final determination of the additional affordable housing required pursuant to Section 419.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its determination in addition to the other information required by Section 402(b) of this Article.

(c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or site permit for a development project subject to the requirements of Section 419.1 et seq., the sponsor of the development project shall select one of the options described in Section 419.3 above or the alternatives described in Section 419.5 below to fulfill the affordable housing requirements and notify the Department of their choice.

(d) **Department Notice to Development Fee Collection Unit of Sponsor Choice.** After the sponsor has notified the Department of their choice to fulfill the additional affordable housing requirements of Section 419.1 et seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the sponsor's choice.

(e) **The Development Fee Collection Unit Notice to Department Prior to Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 419.1 et seq. that has elected to fulfill its requirement with an option other than payment of an in-lieu fee. If the

Department notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 419.1 et seq.

(f) **Process for Revisions of Determination of Requirements.** In the event that the Department or the Commission takes action affecting any development project subject to Section 419.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 419.5. ALTERNATIVES TO THE INCLUSIONARY HOUSING COMPONENT.

(a) **Alternatives to the Inclusionary Housing Component.** In addition to the alternatives specified in Section *415.5(9)* ~~*415.4(c), (and further described above and in Section 415.6, Compliance Through Off-Site Housing Development, and Section 415.7. Compliance Through In-Lieu Fee, and described further above,*~~ the project sponsor may elect to satisfy the requirements of Section 415.5 by one of the alternatives specified in this Section. The project sponsor has the choice between the alternatives and the Planning Commission may not require a specific alternative. The project sponsor must elect an alternative before it receives project approvals from the Planning Commission or Planning Department and that alternative will be a condition of project approval. The alternatives are as follows:

(1) **Middle Income Alternative.** On sites with less than 50,000 square feet of total developable area, applicants may provide units as affordable to qualifying "middle income" households as follows:

(A) A minimum percent of the total units constructed shall be affordable to and occupied affordable to qualifying "middle income" households upon initial sale, according the schedule in Table 419A.4. If the total number of units is not a whole number, the project applicant shall round up to the nearest whole number for any portion of .5 or above. Units

shall be affordable to households between 120 percent and 150 percent of the San Francisco Area Median Income, with an average affordability level of 135 percent for all units provided through this alternative.

(B) Where market rate sales prices exceed restricted sales prices, the difference between the market rate sales prices and the restricted sales prices shall be held by the Mayor's Office of Housing as a silent second mortgage according to the Procedures Manual. The City shall hold a deed of trust and promissory note for the second mortgage. MOH shall hold this mortgage shall release it when the original note and proportional share of the appreciation are paid in full to the City.

(C) Units shall initially be sold at or below prices to be determined by MOH in the Conditions of Approval or Notice of Special Restrictions according to the formula specified in the Procedures Manual to make them affordable to middle income households. Upon resale, the seller shall be permitted to sell the units at their market price. The City will waive its right of first refusal to the seller when the promissory note and deed of trust are paid, along with the City's share of the appreciation of the unit. The promissory note shall accrue no interest and shall require no monthly payments.

(D) Upon first resale, the seller shall have a right to keep a percentage of the total appreciation of the unit proportional to every year the original seller owns the unit as an owner occupant. The remainder of the proceeds of the sale, after the first mortgage, the second mortgage, and any other subordinate financing is paid off, shall be repaid to MOH. Detailed resale procedures shall be specified in the Middle Income Housing Procedures Manual published by MOH and approved by the Planning Commission. The Director of MOH shall amend the Procedures Manual as needed with the Commission's approval.

(E) The City shall monitor units provided under this option during the 2- and 5-year Monitoring Report specified in Section 342 of this Code and in separate resolution. Should

this monitoring report indicate that units constructed under this program do not meet the programs stated goals of providing affordable housing to Middle Income Households, the Planning Department and MOH shall consider changes to this program, including, but not limited to, legislative changes.

(F) If the project sponsor elects to satisfy the requirements of Section 415.5 and of this Section by the alternative specified above, the requirement that 40 percent of the total number of proposed dwelling units shall contain at least two bedrooms may be waived provided the minimum percent of total units affordable to qualifying "middle income" as required by Table 419A.4 is increased by 10%.

(2) **Land Dedication Alternative.** Applicants may dedicate a portion of the total developable area of the principal site to the City and County of San Francisco for the purpose of constructing units affordable to qualifying households. A minimum percentage of developable area, representing an equivalent percent of total potential units to be constructed, shall be dedicated to the City according the schedule in Table 419A.4. To meet the requirements of this alternative, the developer must convey title to land in fee simple absolute to MOH according to the Procedures Manual, provided the dedicated site is deemed of equivalent or greater value to the principal site per those procedures and is in line with the following requirements:

(A) The dedicated site will result in a total amount of inclusionary units not less than forty (40) units. MOH may conditionally approve and accept dedicated sites which result in no less than twenty-five (25) units at its discretion.

(B) The dedicated site will result in a total amount of inclusionary units that is equivalent or greater than the minimum percentage of the units that will be provided on the principal site, as required by Table 419A.4. MOH may also accept dedicated sites that represent the equivalent of or greater than the required percentage of units for all units be

provided on a collective of sites within a one-mile radius, provided the total amount of inclusionary units provided on the dedicated site is equivalent to or greater than the total requirements for all principal sites participating in the collective, according to the requirements of Table 419A.4.

(C) The dedicated site is suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria. The site must allow development of affordable housing that is sound, safe and acceptable.

(D) The dedicated site includes infrastructure necessary to serve the inclusionary units, including sewer, utilities, water, light, street access and sidewalks.

(E) The developer must submit full environmental clearance for the dedicated site before the land can be considered for conveyance, and before a first site or building permit may be conferred upon the principal project.

(F) The City may accept dedicated sites that vary from the minimum threshold provided such a dedication is deemed generally equivalent to the original requirement by the Mayor's Office of Housing.

(G) The City may accept dedicated sites that meet the above requirements in accordance with the Procedures Manual, in combination with ~~*in-lieu*~~ fees or on-site units, provided such a combination is deemed generally equivalent by MOH to the original requirement.

(H) The project applicant has a letter from MOH verifying acceptance of site before it receives project approvals from the Planning Commission or Planning Department, which shall be used to verify dedication as a condition of approval.

(I) If the project sponsor elects to satisfy the requirements of Section 415.5 and of this Section by the alternative specified above, the requirement that 40 percent of the total number of proposed dwelling units shall contain at least two bedrooms may be waived.

(J) The Land Dedication Alternative may be satisfied through the dedication to the City of air space above or adjacent to the project, upon the approval of MOH, or a successor entity, and provided the other requirements of subsection (a)(2)(A)—(I) are otherwise satisfied.

TABLE 419A.4

Tier	On-Site Housing Requirement	Off-Site/In-Lieu Requirement	Middle Income Alternative*	Land Dedication Alternative for sites that have less than 30,000 square feet of developable area	Land Dedication Alternative for sites that have at least 30,000 square feet of developable area
A	18%	23%	30%	35%	30%
B	20%	25%	35%	40%	35%
C	22%	27%	40%	45%	40%

HOUSING REQUIREMENTS FOR THE UMU DISTRICT

*Requirement increases by 5% if two-bedroom requirement is waived.

(b) Rental Incentive. Qualified rental housing projects, as defined in Section 419A.2(g), are allowed a reduction in their inclusionary housing requirements as follows:

(1) If the rental housing project chooses to meets its inclusionary housing requirements through on-site construction, off-site construction, or an in-lieu fee, then the project is entitled to a 3% reduction in the requirements specified above in subsection (a).

(2) If the rental housing project chooses to meet its inclusionary housing requirements through the land dedication option for projects less than 30,000 square feet, then the project is entitled to a 5% reduction in the requirements specified above in the subsection (b)(2).

(3) In addition, a rental housing project shall receive a fee waiver from the Eastern Neighborhood Public Benefit Fee as set forth in Section 427.3 in the amount of $1.00 per gross square foot.

(4) No rental incentive shall be provided for project that chooses the land dedication alternative for projects over 30,000 square feet.

(c) **Adjustments to Requirements for the Inclusionary Housing Component.** This Section is intended to incorporate, rather than supersede, any changes made to Planning Code Section 415. In the instance that the base requirements of Section 415 are amended, the above-noted requirements shall be reviewed, and if appropriate, amended and/or increased accordingly.

SEC. 420. VISITACION VALLEY COMMUNITY FACILITIES AND INFRASTRUCTURE FEE AND FUND.

Sections 420.1 through 420.*6* ~~5~~, hereafter referred to as Section 420.1 et seq., set forth the requirements and procedures for the Visitacion Valley Community Facilities and Infrastructure Fee and Fund. The effective date of these requirements shall be either November 18, 2005, which is the date that the requirements originally became effective, or the date a subsequent modification, if any, became effective.

SEC 420.4. IMPOSITION OF REQUIREMENTS.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 420.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 420.1 et seq. is applicable, the net addition of occupiable square feet of residential use subject to its requirements, and shall impose the fee requirements as a condition of approval for issuance of the *first construction document* ~~*building or site permit*~~ *for the development project*. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) ***Department*** **Notice to Development Fee Collection Unit** ***at DBI*** ~~***of Requirements***~~**.** Prior to issuance of the building or site permit for a development project subject to Section 420 et seq., the Department shall notify the Development Fee Collection Unit at DBI of its final determination of any fee requirements, including any fee credits for in-kind improvements, in addition to the other information required by Section 402(b) of this Article.

(c) **Development Fee Collection Unit Notice to Department.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 420.1 et seq. that has elected to satisfy its fee requirement with credits-in-kind improvements. If the Department notifies the Unit at such time that the sponsor has not satisfied the in-kind improvements requirements of Section 420.3, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance.

(d) **Process for Revisions of Determination of Requirements.** In the event that the Department or the Commission takes action affecting any development project subject to Section 420.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 420.*5* *4*. LIEN PROCEEDINGS.

If, for any reason, the fee imposed under Section 420.3 remains unpaid following issuance of the certificate of occupancy, the Development Fee Collection Unit at DBI shall institute lien proceedings to make the entire unpaid balance of the fee, plus interest and any deferral surcharge, a lien against all parcels used for the development project in accordance with Section 408 of this Article and Section 107A.13.215 of the San Francisco Building Code.

SEC. 420.*6*~~*5*~~. VISITACION VALLEY COMMUNITY FACILITIES AND INFRASTRUCTURE FUND.

(a) There is hereby established a separate fund set aside for a special purpose entitled the Visitacion Valley Community Facilities and Infrastructure Fund ("Fund"). All monies collected by DBI pursuant to Section 420.3(b) shall be deposited in the Fund which shall be maintained by the Controller.

(b) The receipts in the Fund are, subject to the budgetary and fiscal provisions of the Charter, to be used solely to fund community facilities and infrastructure in Visitacion Valley, including but not limited to capital improvements to library facilities, playgrounds, recreational facilities, and major streets.

(c) No portion of the Fund may be used, by way of loan or otherwise, to pay any administrative, general overhead, or similar expense of any public entity.

(d) The Controller shall not release any monies from the Fund without prior approval of the Board of Supervisors for an expenditure. City Agencies responsible for the construction or improvement of public infrastructure subject to this ordinance, including but not limited to the San Francisco Public Library, DPW, and the Department of Recreation and Parks, shall request funds from the Board of Supervisors as necessary. Before approving any expenditures, the Board of Supervisors shall determine the relative impact from the residential development on public infrastructure in Visitacion Valley described in Section 420.~~5~~6(b) and

shall insure that the expenditures are consistent with mitigating the impacts from the development.

(e) The Controller's Office shall file an annual report with the Board of Supervisors beginning one year after the effective date of Section *420.1* ~~*418.1*~~ et seq., which report shall set forth the amount of money collected in the Fund.

SEC. 421.4. IMPOSITION OF COMMUNITY INFRASTRUCTURE IMPACT FEE.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 421.1 et seq. to any development project requiring a *first construction document* ~~*building or site permit*~~ and, if Section 421.1 is applicable, the number of gross square feet of each type of space subject to its requirements, and shall impose these requirements as a condition of approval for issuance of the *first construction document* ~~*building or site permit*~~ for the *development* project to mitigate the development impacts. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) ***Department* Notice to Development Fee Collection Unit *at DBI* ~~*of Requirements*~~.** After the Department has made its final determination of the net addition of gross square feet of each type of space subject to Section 421.1 et seq., it shall immediately notify the Development Fee Collection Unit at DBI of its determination in addition to the other information required by Section 402(b) of this Article.

(c) **Sponsor's Choice to Fulfill Requirements.** Prior to issuance of a building or site permit for a development project subject to the requirements of Section 421.1 et seq., the sponsor shall elect an option under Section 421.3 to fulfill the requirements of Section 421.1 et seq. and notify the Department of their choice.

(d) **Department's Notice to Development Fee Collection Unit of Sponsor's Choice.** After the project sponsor has notified the Department of the choice to fulfill the

requirements of Section 421.1 et seq., the Department shall immediately notify the Development Fee Collection Unit at DBI of the project sponsor's choice.

(e) **Development Fee Collection Unit Notice to Department Prior to Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 421.1 et seq. that has elected to fulfill all or part of the requirement with an option other than payment of a fee. If the Department notifies the Unit at such time that the sponsor has not satisfied the requirements, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 421.1 et seq.

(f) ***Process for Revisions of Determination of Requirements.*** In the event that the Department or the Commission takes action affecting any development project subject to Section 421.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) shall be followed.

SEC. 422.4. IMPOSITION OF COMMUNITY IMPROVEMENTS IMPACT FEE.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 422.1 et seq. to any development project requiring a building or site permit and, if Section 422.1 et seq. is applicable, the amount of Community Improvements Impact Fees required and shall impose these requirements as a condition of approval ~~*for issuance of the building or site permit for*~~ *of* the ~~*proposed*~~ development project. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) ***Department N*****otice to Development Fee Collection Unit *at DBI*** ~~***of Requirements***~~**.** Prior to the issuance of a building or site permit for a development project subject to the requirements of Section 422.1 et seq., the Department shall notify the

Development Fee Collection Unit at DBI of its final determination of the amount of Community Improvements Impact Fees required, including any reductions calculated for an In-Kind Improvements Agreement, in addition to the other information required by Section 402(b) of this Article.

(c) **Development Fee Collection Unit Notice to Department Prior to issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 422.1 et seq. that has elected to fulfill all or part of its Community Improvements Impact Fee requirement with an In-Kind Improvements Agreement. If the Department notifies the Unit at such time that the sponsor has not satisfied any of the terms of the In-Kind Improvements Agreement, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 422.1 et seq., either through conformance with the In-Kind Improvements Agreement or payment of the remainder of the Community Improvements Impact Fees that would otherwise have been required, plus a deferral surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

(d) ***Process for Revisions of Determination of Requirements.*** In the event that the Department or the Commission takes action affecting any development project subject to Section 422.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 423.4. IMPOSITION OF EASTERN NEIGHBORHOODS INFRASTRUCTURE IMPACT FEE.

(a) **Determination of Requirements.** The Department shall determine the applicability of Section 423.1 et seq. to any development project requiring a *first construction*

document ~~*building or site permit*~~ and, if Section 423.1 et seq. is applicable, the amount of Eastern Neighborhoods Infrastructure Impact Fees required and shall impose these requirements as a condition of approval for issuance of the *first construction document* ~~*building or site permit*~~ for the ~~*proposed*~~ development project. The project sponsor shall supply any information necessary to assist the Department in this determination.

(b) ***Department*** **Notice to Development Fee Collection Unit** ***at DBI*** ~~***of Requirements***~~**.** Prior to the issuance of a building or site permit for a development project subject to the requirements of Section 423.1 et seq., the Department shall notify the Development Fee Collection Unit at DBI of its final determination of the amount of Eastern Neighborhoods Infrastructure Impact Fees required, including any reductions calculated for an In-Kind Improvements Agreement, in addition to the other information required by Section 402(b) of this Article.

(c) **Development Fee Collection Unit Notice to Department Prior to** ~~**i**~~**Issuance of the First Certificate of Occupancy.** The Development Fee Collection Unit at DBI shall provide notice in writing or electronically to the Department prior to issuing the first certificate of occupancy for any development project subject to Section 422.1 et seq. that has elected to fulfill all or part of its Eastern Neighborhoods Impact Fee requirement with an In-Kind Improvements Agreement. If the Department notifies the Unit at such time that the sponsor has not satisfied any of the terms of the In-Kind Improvements Agreement, the Director of DBI shall deny any and all certificates of occupancy until the subject project is brought into compliance with the requirements of Section 422.1 et seq., either through conformance with the In-Kind Improvements Agreement or payment of the remainder of the Eastern Neighborhood Infrastructure Impact Fees that would otherwise have been required, plus a deferral surcharge as set forth in Section 107A.13.3.1 of the San Francisco Building Code.

(d) ***Process for Revisions of Determination of Requirements.*** In the event that the Department or the Commission takes action affecting any development project subject to Section 422.1 et seq. and such action is subsequently modified, superseded, vacated, or reversed by the Department or the Commission, Board of Appeals, the Board of Supervisors, or by court action, the procedures of Section 402(c) of this Article shall be followed.

SEC. 424.3. APPLICATION OF VAN NESS AND MARKET AFFORDABLE HOUSING AND NEIGHBORHOOD INFRASTRUCTURE FEE AND PROGRAM.

(a) Application. Section 424.1 et seq. shall apply to any development project located in the Van Ness and Market Downtown Residential Special Use District, as established in Section 249.33 of this Code.

(b) Amount of Fee.

(i) All uses in any development project within the Van Ness and Market Downtown Residential Special Use District shall pay $30.00 per net additional gross square foot of floor area in any portion of building area exceeding the base development site FAR of 6:1 up to a base development site FAR of 9:1.

(ii) All uses in any development project within the Van Ness and Market Downtown Residential Special Use District shall pay $15.00 per net additional gross square foot of floor area in any portion of building area exceeding the base development site FAR of 9:1.

(c) Option for In-Kind Provision of Infrastructure Improvements and Fee Credits. *Project sponsors may propose to directly provide community improvements to the City. In such a case, the City may enter into an In-Kind Improvements Agreement with the sponsor and issue a fee waiver from the neighborhood infrastructure portion ($15.00 per net additional gross square foot of floor area) of the Van Ness and Market Downtown Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee from the Planning Commission, subject to the following rules and requirements:*

(1) Approval criteria. The City shall not enter into an In-Kind Agreement unless the proposed in-kind improvements meet an identified community need as analyzed in the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Program and where they substitute for improvements that could be provided by the Van Ness and Market Downtown Residential Special Use District Infrastructure Fee Fund (as described in Section 424.5). The City may reject in-kind improvements if they are not consistent with the priorities identified in the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Program. No physical improvement or provision of space otherwise required by the Planning Code or any other City Code shall be eligible for consideration as part of this In-Kind Improvements Agreement.

(2) Valuation. The Director of Planning shall determine the appropriate value of the proposed in-kind improvements. For the purposes of calculating the total value, the project sponsor shall provide the Planning Department with a cost estimate for the proposed in-kind improvement(s) from two independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it is indexed to current cost of construction.

(3) Content of the In-Kind Improvements Agreement. The In-Kind Improvements Agreement shall include at least the following items:

(i) A description of the type and timeline of the proposed in-kind improvements.

(ii) The appropriate value of the proposed in-kind improvement, as determined in subsection (2) above.

(iii) The legal remedies in the case of failure by the project sponsor to provide the in-kind improvements according to the specified timeline and terms in the agreement. Such remedies shall include the method by which the City will calculate accrued interest.

(4) Approval Process. The Planning Commission must approve the material terms of an In-Kind Agreement. Prior to the parties executing the Agreement, the City Attorney must approve the

agreement as to form and to substance. The Director of Planning is authorized to execute the Agreement on behalf of the City. If the Planning Commission approves the In-Kind Agreement, it shall waive the amount of the neighborhood infrastructure portion of the Van Ness and Market Downtown Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee by the value of the proposed In-Kind Improvements Agreement as determined by the Director of Planning. No credit shall be made for land value unless ownership of the land is transferred to the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of the City. The maximum value of the In-Kind Improvements Agreement shall not exceed the required neighborhood infrastructure portion of the Van Ness and Market Affordable Housing and Neighborhood Infrastructure Fee.

(5) Administrative Costs. Project sponsors that pursue an In-Kind Improvements Agreement will be billed time and materials for any administrative costs that the Planning Department or any other City entity incurs in negotiating, drafting, and monitoring compliance with the In-Kind Improvements Agreement.

~~*The Commission may reduce the total amount of fees generated by the neighborhood infrastructure portion ($15.00 per net additional gross square foot of floor area) of the Van Ness and Market Downtown Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee owed for specific development projects in cases where the Director has recommended approval and the project sponsor has entered into an In-Kind Improvements Agreement with the City. In-Kind Improvement Agreements may only be accepted if they are identified in the Market and Octavia Area Plan of the General Plan, mitigate impacts of growth in the general vicinity of the Van Ness and Market Downtown Residential Special Use District area, meet identified community needs as analyzed in the Market and Octavia Area Plan Community Improvements Program, and serve as a substitute for improvements funded by infrastructure impact fee revenue such as street improvements, transit improvements, and community facilities. Open space or streetscape improvements proposed to satisfy*~~

~~*the usable open space requirements of Section 135 are not eligible as in-kind improvements. No proposal for in-kind improvements shall be accepted that does not conform to the criteria above. Project sponsors that pursue In-Kind Improvement Agreements with the City will be charged time and materials for any additional administrative costs that the Department or any other City agency incurs in processing the request.*~~

~~*(1) The $15.00 per gross square foot neighborhood infrastructure portion of the Van Ness and Market Downtown Residential Special Use District Affordable Housing and Neighborhood Infrastructure Fee may be reduced by the total dollar value of any infrastructure improvements provided through an In-kind Improvements Agreement recommended by the Director and approved by the Commission. For the purposes of calculating the total dollar value, the project sponsor shall provide the Department with a cost estimate for the proposed in-kind improvement(s) from two independent sources or, if relevant, real estate appraisers. If the City has completed a detailed site-specific cost estimate for a planned improvement this may serve as one of the cost estimates provided it is indexed to current cost of construction. Based on these estimates, the Director shall determine the appropriate value of the in-kind improvements and the Commission shall reduce the infrastructure portion of the Van Ness and Market Downtown Residential SUD Affordable Housing and Neighborhood Infrastructure Fee otherwise due by an equal amount. No credit shall be made for land value unless ownership of land is transferred to the City or a permanent public easement is granted, the acceptance of which is at the sole discretion of the City.*~~

~~*(2) All In-Kind Improvement Agreements shall require the project sponsor to reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with the In-Kind Improvements Agreement. The City also shall require the project sponsor to provide a letter of credit or other instrument, acceptable in form and substance to the Department and the City Attorney, to secure the City's right to receive improvements as described above.*~~

SEC. 430. SEVERABILITY.

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this Article or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Article shall remain in effect.

Section 3. If an evaluation comparable to that required by Section 410 of this Article was completed in 2010 or 2011 for a development fee imposed by this Article, that fee need not be included in the 2011 comprehensive five-year evaluation.

Section 4. The San Francisco Administrative Code is hereby amended by repealing Section 38.14, as follows:

~~***SEC. 38.14. SEVERABILITY.***~~

~~*The provisions of this ordinance shall not apply to any person, association, corporation or to any property as to whom or which it is beyond the power of the City to impose the fee herein provided. If any sentence, clause, section or part of this ordinance, or any fee imposed upon any person or entity is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section or part of this ordinance, or person or entity; and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this ordinance, or its effect on other persons or entities. It is hereby declared to be the intention of the Board of Supervisors of the City that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part of this ordinance not been included herein; or had such person or entity been expressly exempted from the application of this ordinance. To this end the provisions of this ordinance are severable.*~~

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

By: _____
JUDITH A. BOYAJIAN
Deputy City Attorney