



# SAN FRANCISCO PLANNING DEPARTMENT

## Planning Commission Resolution No. 18017

HEARING DATE: JANUARY 21, 2010

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*Project Name:* Development Stimulus and Fee Reform

*Case Number:* 2009.1065T [Board File No. 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary & Jobs Housing Linkage Programs ]

*Initiated by:* Mayor Newsom / Introduced November 3, 2009

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*Reviewed By:* Lawrence Badiner, Assistant Director and  
Alicia John-Baptiste, Assistant Director

*90-day Deadline:* February 3, 2010

*Recommendation:* **Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS THREE PROPOSED ORDINANCES INTRODUCED BY MAYOR NEWSOM THAT COMPRISE A LEGISLATIVE PACKAGE INTENDED TO STIMULATE DEVELOPMENT AND CONSTRUCTION IN SAN FRANCISCO. THE PROPOSED PACKAGE SEEKS TO CREATE OPPORTUNITIES TO LINK PAYMENT OF PERMITTING FEES TO FIRST CONSTRUCTION PERMIT, WHEN LOANS ARE MORE READILY AVAILABLE FOR CONTRACTORS, WHILE PROTECTING THE CITY'S REVENUE STREAM OF DEVELOPMENT IMPACT AND PROCESSING FEES.

### PREAMBLE

Whereas, on October 27, 2009 and November 3, 2009, Mayor Newsom introduced three proposed Ordinance under Board of Supervisors (hereinafter "Board") File Numbers 09-1275 Development Impact and In-Lieu Fees, 09-1251 Development Fee Collection Procedure; Administrative Fee, and 09-1252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs.

Whereas, on December 15, 2009 revised ordinances were introduced for the Development Fee Collection Procedure; Administrative Fee and the Development Impact and In-Lieu Fees Ordinances [Board File Nos 09-1251-2 and 09-1275-2].

Whereas, respectively, these proposed Ordinances would

1. **BF 091275-2 Development Impact and In-Lieu Fees** would create a new Article Four in the Planning Code to consolidate fee and in-lieu controls in one article; add Section 402 to provide that all impact fees and in-lieu fees will be collected by DBI prior to issuance of the first construction permit, with the option to defer payment to prior to issuance of the first certificate of occupancy in exchange for a deferral surcharge; provide that physical improvements would be confirmed by the regulating department prior to first certificate of occupancy; and where possible, create standard definitions, procedures, appeals, and reporting standards while deleting duplicative language.

The following fees would be placed in the new Article Four:

- a. Downtown Park Special Fund (Section 139);
  - b. Van Ness and Market Downtown Residential Special Use District (Section 249.33);
  - c. Housing Requirements for Large-Scale Development Projects, Jobs-Housing Linkage Program (Sections 313-313.15);
  - d. Child-Care Requirements for Office and Hotel Developments (Sections 314-314.8);
  - e. Inclusionary Affordable Housing Program (Sections 315-315.9);
  - f. Residential Community Improvements Fund and the SoMa Community Stabilization Fund (Section 318-318.9);
  - g. Housing Requirements for Residential Development Projects in the UMU Zoning Districts of the Eastern Neighborhoods and the Land Dedication Alternative in the Mission NCT District (Section 319-319.7);
  - h. Market and Octavia Community Improvements Fund (Sections 326-326.8);
  - i. Eastern Neighborhoods Public Benefit Fund (Section 327-327.6);
  - j. Balboa Park Community Improvement Fund (Sections 331-331.6);
  - k. Visitacion Valley Community Facilities and Infrastructure Fee (Sections 420 – 420.5.) and
  - l. Transit Impact Development Fee (Chapter 36 of the Administrative Code).
2. **BF 091251-2 Development Fee Collection Procedure; Administrative Fee** would amend the Building Code to establish a procedure for the Department of Building Inspection (DBI) to collect all development impact fees. The proposed Ordinance would ensure that fees are paid prior to the issuance of the first construction permit or allow the project sponsor to defer payment until issuance of first certificate of occupancy in exchange for paying a fee deferral surcharge. These fee procedures would be implemented by a new "Fee Collection Unit" within DBI that would ensure fee payment prior to issuance periods; would require a Project Development Fee Report prior to issuance of building or site permits; and would provide an appeal opportunity to the Board of Appeals.
  3. **BF 091252 Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs** would amend Sections 313.4 and 315.5 and add 313.16 to add an alternative for both the Jobs Housing Linkage Program and the Residential Inclusionary Affordable Housing Program. The new option would allow a project sponsor to defer 33% of its obligation under either program in exchange for recording an Affordable Housing Transfer Fee

Restriction on the property. This fee restriction would require 1% of the value of the property at every future sale to be paid to the Citywide Affordable Housing Fund.

Whereas, In March, 2008, San Francisco published its Citywide Development Impact Fee Study Consolidated Report. The purpose of the Study was to evaluate the overall state, effectiveness, and consistency of the City's impact fee collection process and to identify improvements. Among other things, the Study cited the City's decentralized process as a problem. Centralizing the collection of development impact and in-lieu fees within the Department of Building Inspection and providing for an auditing and dispute-resolution function within DBI will further the City's goals of streamlining the process, ensuring that fees are accurately assessed and collected in a timely manner, informing the public of the fees assessed and collected, and implementing some suggestions in the Consolidated Report.

Whereas, the current economic climate has dramatically slowed the development of new commercial and residential projects in California, including in the City and County of San Francisco. In the construction sector, working hours among the trades have declined between 30% and 40% from a year ago.

Whereas, The Controller's Office has verified that the amount of the reduction in obligations under Jobs-Housing Linkage Program and the Residential Inclusionary Affordable Housing Program and the expected value of the Affordable Housing Transfer Fee are substantially equivalent. The Controller's Office derived the 33% reduction in obligations under the two ordinances by discounting a reasonably conservative estimate of average citywide sales prices, property turnover rates and appreciation rates for the three major types of land use subject to affordable housing fees and exactions in San Francisco: (1) for-sale residential; (2) rental residential; and (3) commercial office.

Whereas, on January 21, 2010, the San Francisco Planning Commission (hereinafter "Commission") conducted duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance;

Whereas, at that hearing the Commission requested to hear and vote on two of the Ordinances first [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee] and then consider and vote on the third Ordinance [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs].

Whereas, this resolution pertains solely to [BF 091252/BF Affordable Housing Transfer Fee Restriction Alternative for Inclusionary and Jobs Housing Linkage Programs] and Resolution Number 18015 pertains to [BF 091275/BF 091275-2 Development Impact and In-Lieu Fees & BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee].

Whereas, the proposed Ordinances have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15060(c)(2) and 15273; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of City department, 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 Ordinances; and

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

## FINDINGS

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

1. The proposal for fee deferrals has been reviewed by the MOH and the Controller. The proposal has been endorsed by MOH and the Controller's Office has provided data projecting that overall revenue for affordable housing will not be lost.
2. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### Commerce & Industry Element POLICY 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

### Commerce & Industry Element OBJECTIVE 2:

Maintain and enhance a sound and diverse economic base and fiscal structure for the city.

### Commerce & Industry Element POLICY 2.1

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

### Recreation and Open Space Element Introductory Text

Maintaining the City's existing open space system is a continuing challenge. Maintenance continues to be a problem due to rising costs and limitations on staffing and equipment. In addition, many of the parks are old and both park landscapes and recreation structures are in need of repair or renovation. Heavily used parks and recreation facilities require additional maintenance. However, the number of recreation facilities has increased and their use intensified, often without a corresponding increase in the budget necessary to maintain facilities and offer the desired recreation programs.

**Recreation and Open Space Element POLICY 2.1**

Provide an adequate total quantity and equitable distribution of public open spaces throughout the City.

**Recreation and Open Space Element POLICY 2.7**

Acquire additional open space for public use.

**Recreation and Open Space Element POLICY 4.4**

Acquire and develop new public open space in existing residential neighborhoods, giving priority to areas which are most deficient in open space.

**Community Facilities Element Objective 3**

ASSURE THAT NEIGHBORHOOD RESIDENTS HAVE ACCESS TO NEEDED SERVICES AND A FOCUS FOR NEIGHBORHOOD ACTIVITIES.

**Community Facilities Element Policy 3.1**

Provide neighborhood centers in areas lacking adequate community facilities.

**Community Facilities Element Policy 3.4**

Locate neighborhood centers so they are easily accessible and near the natural center of activity.

**Community Facilities Element Policy 3.6**

Base priority for the development of neighborhood centers on relative need.

**Community Facilities Element Objective 8**

ASSURE THAT PUBLIC SCHOOL FACILITIES ARE DISTRIBUTED AND LOCATED IN A MANNER THAT WILL ENHANCE THEIR EFFICIENT AND EFFECTIVE USE.

**Transportation Element POLICY 1.1:**

Involve citizens in planning and developing transportation facilities and services, and in further defining objectives and policies as they relate to district plans and specific projects.

**Air Quality Element POLICY 3.1**

Take advantage of the high density development in San Francisco to improve the transit infrastructure and also encourage high density and compact development where an extensive transportation infrastructure exists.

**Air Quality Element POLICY 3.4**

Continue past efforts and existing policies to promote new residential development in and close to the downtown area and other centers of employment, to reduce the number of auto commute trips to the city and to improve the housing/job balance within the city.

**Air Quality Element POLICY 3.6**

Link land use decision making policies to the availability of transit and consider the impacts of these policies on the local and regional transportation system.

**Urban Design Element POLICY 3.9**

Encourage a continuing awareness of the long-term effects of growth upon the physical form of the city.

3. **The Commission is recommending the following modifications to the proposed Ordinances:**
1. **Clarify that this new ability to defer fees is offered only to those projects that have not yet paid development impact fees.** Since the adoption of the Area Plans, City agencies have been working to plan and build infrastructure for new development. Collected impact fees have been programmed and are needed to complete planned infrastructure. The administrative burden of providing *fee refunds* to then allow *fee deferrals* is disproportionate to the relative benefit to the projects that fall within in this category. Further, DBI has advised that offering refunds would be administratively infeasible.
  2. **Tighten the procedures around the “Affordable Housing Transfer Fee Restriction”.** The proposed Ordinance should be amended to require the Fee Unit in DBI to be presented with the required NSR at a specific points such as “First Construction Permit”. In addition MOH and the Fee Collection Unit in DBI should be required to (instead of authorized to) record separate NSRs on subsequent subdivisions of the property.
  3. **Remove the option to pre-pay the “present value” of the restriction.** The current draft of the proposed legislation allows property owners to pre-pay the “present value” of the restriction at any time to remove the NSR, although the “present value of the restriction” is not reduced through previous transfer payments. However, based on feedback received from a variety of stakeholders, the Mayor’s Office, OEWD and MOH have all agreed that this provision will be eliminated in subsequent amendments.
  4. **Include a legislative end-date for fee deferrals.** As this legislative package is intended to counter the difficult economic times, an end-date should be added where the City would no longer allow the deferral of fees. In lieu of pre-determining the date, the legislation should be amended to expire under one of the following markers 1) once a certain number of residential units and/or square foot of commercial development has been built; 2) the Controller has determined that a standard economic indicator has been reached; or alternatively, 3) the legislation could require review of the deferral programs at regular intervals before both the Planning Commission and the Land Use Committee of the Board of Supervisors.

4. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

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

*The proposed Ordinance would allow additional neighborhood serving retail and personal services.*

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

*The proposed Ordinance would not affect existing residential character or diversity of our neighborhoods.*

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

*According to the Mayor's Office of Housing, "After numerous discussions with interested parties and analysis of applicable data, the Mayor's Office of Housing believes this proposal provides an excellent opportunity in the midst of the current economic climate; accelerating quality development and its associated revenues while creating a lasting impact on San Francisco's chronic affordable housing crisis."*

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

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

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

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

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

*Preparedness against injury and loss of life in an earthquake would not be impeded by the proposed Ordinance.*

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

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

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

*The City's existing parks and open space and their access to sunlight and vistas would not be affected by the proposed Ordinance.*

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on January 21, 2010.



Linda Avery  
Commission Secretary

AYES: Antonini, Borden, Lee, Moore, Sugaya, and Miguel

NAYS: Olague

ABSENT:

ADOPTED: January 21, 2010