

Planning Commission Policy: *Procedures for In-Kind Agreements*

Initiate In-Kind Process

The Planning Department will inform the project sponsor of the option to pursue an in-kind agreement and the related procedures outlined in this policy, in the first formal communication after the sponsor files for entitlement (See Appendix A). The project sponsor will coordinate with the Planning Department and CACs (as relevant) and refer to the area plan and any related infrastructure or community plans to explore opportunities for in-kind improvements.

Once the project sponsor indicates interest in pursuing an in-kind agreement the Planning Department will provide a courtesy notification at the next CAC meeting.

The project sponsor will be responsible for all city staff time and materials associated with an in-kind agreement, regardless of whether the in-kind agreement is approved.

Step 1: In-Kind Improvement Eligibility Determined

The Planning Department will determine eligibility at the onset of the process based on the language in the Planning Code describing the circumstances under which an In-Kind Agreement is warranted. The Planning Commission policy is that three eligibility criteria should be met before being deemed *eligible* for a fee waiver and in-kind agreement. If any of the criteria are not met, the proposal is deemed ineligible for an in-kind provision and the project sponsor can not make a request to the Commission for a fee waiver.

1. The Improvement Fulfills the Purpose of Community Improvements

The Planning Code provisions related to In-Kind agreements generally provide that the improvements provided in-kind must be public infrastructure or facilities. (See, for example, Planning Code Sections 418.3(e), 421.3(d), 422.3(d), and 423.3(d)). In order to implement this requirement, the Planning Commission will require that all improvements provided in-kind must be *available to the public* to the same extent they would be if the City provided the infrastructure. In-kind parks must be publicly owned and accessible at hours consistent with similar City owned parks, streetscapes must be publicly owned and childcare facilities must meet the same standards of access as childcare facilities that receive public funding from Department of Children Youth and their Families (DCYF).¹ If the proposed improvement will be publicly accessible and available, then it is eligible for an in-kind provision.

¹ Should a particular fee ordinance specifically call out provisions for privately owned but publicly accessible infrastructure the code would supersede this policy's requirement for public infrastructure.

2. The Infrastructure Type is Identified in the Fee Ordinance

If a category of infrastructure, such as open space, was identified in the planning process and included as an expenditure category in the fee ordinance, then a new park is eligible for an in-kind provision. Infrastructure types not identified in the relevant fee ordinance, such as fire stations, are ineligible.

3. The Expenditure Category for Infrastructure Type is Not Exhausted

The Planning Code provisions related to Area Plan impact fees generally require that the City spend the impact fees in proportion to impacts identified in each Area Plan. Accordingly, each impact fee ordinance designates a certain percentage of revenue to each infrastructure type. Thus, it is the Planning Commission's policy that community improvements funded by impact fees, or provided through in-kind agreements, must be expended consistent with these proportions every five years. If the expenditure category for a proposed improvement is exhausted for the 5 year period, the proposed improvement is not eligible for an in-kind agreement.

If a proposed improvement is deemed ineligible, a project sponsor may propose an alternative improvement or pay required fees.

Step 2: Determine Whether Proposed Improvement is a Priority

Once deemed eligible for in-kind provision, the Department and CAC determine whether it is a priority. The criteria for a prioritization and recommendation noted below are more flexible than the eligibility criteria described above; therefore the priority and recommendation criteria below should be considered in balance. Meeting one criteria or failure to meet another does not determine the Department's recommendation.

Improvement is Identified in the Five Year Capital Plan

In instances where a project sponsor proposes an improvement that is identified in the IPIC and CAC endorsed five year capital plan as a priority project – the Planning Department should recommend the in-kind agreement.

Improvement does not Compete with a CAC and IPIC Endorsed Improvement

If a proposed in-kind project competes for revenue with an IPIC and CAC prioritized project, especially if the City has invested resources in developing that project, the Planning Department should *not* recommend the proposed in-kind improvement.

Capital planning efforts by the IPIC and CAC should accommodate smaller in-kind proposals when developing a capital plan, by not programming 100% of expected impact fee revenue in appropriate expenditure categories.

Eastern Neighborhoods Priority Improvement

The Eastern Neighborhoods plan includes legislated priority capital improvements including Townsend Street, Victoria Manalo Draves Park - Pedestrian Improvements, Folsom Street - Streetscape Improvements, 16th Street - Streetscape Improvements, 16th Street - Transit Improvements, New 17th & Folsom Park, and Showplace Square

Open Space Plan (including implementation of one open space project). Project sponsors are encouraged to seek fee waivers and in-kind agreements for these priority improvements in Eastern Neighborhoods. The Department should not recommend projects that compete with these improvements for revenue.

CAC Supports the Proposed Improvement

In some cases the established capital plan or other improvement prioritization processes do not provide clarity on whether a proposed improvement is a priority. In those cases the relevant CAC should evaluate the proposal to determine whether it is a priority. This could occur when priority projects are not identified for an expenditure category, or when the development projects offers a unique opportunity for a community improvement. For consistency, the CACs should use established evaluation criteria to review in-kind projects not already identified as a CAC priority (see Appendix B).

Efficiencies are Gained Through Coordination with Development Project

When an in-kind approval leverages efficiencies for the community improvements program this should impact prioritization. The Department should recommend proposed in-kind improvements that offer major efficiencies.

Projects which are not determined to be a priority may still elect to pursue Planning Commission approval, they must still complete the review process as described below.

Step 3: Determine Whether Proposed Improvement is Recommended to the Planning Commission

Once an improvement is determined as a priority, the Planning Department and the CAC shall determine whether to recommend the specific in-kind improvement to the Planning Commission. To allow this evaluation, the proposed improvement must be defined including conceptual design, project maintenance, and cost/value. The project sponsors must also provide information regarding neighborhood support and proposed terms of agreement. These details, as described below, should inform the Department and CAC recommendations.

The relevant CAC should pass a resolution or recommendation on the proposed improvement the Commission will consider for an in-kind agreement. The CACs are encouraged to draft detailed resolutions on specific components of the proposed improvement, rather than general “up or down” resolutions.

Relevant City Agencies Review and Approve the Proposed Design

A conceptual design of the proposed improvement is adequate at the initial phase of discussions with the Department and CAC. The schematic design must be complete (30% designed) before a formal recommendation from the Department and other City agencies is finalized. The Commission will not hear requests for in kind provision of improvements until the schematic design is complete.

Relevant City agencies must review the proposed schematic design and provide formal comments to the Planning Department. The Department should base its recommendation on the feasibility of the project and City agency support.

Maintenance Plan

Proposed in-kind improvements must include maintenance plans. Possible maintenance strategies include: development of an assessment district to fund maintenance, commitment from the project sponsor or related home owners association to fund maintenance, commitment from a public agency to fund maintenance, or any other committed source. Project sponsors cannot get credit for funding maintenance plans, as impact fee revenue is limited to capital expenditures. At a minimum new parks and other property that will become City responsibility require three years maintenance funding in hand or similar arrangement that insures appropriate maintenance of the park. The Department should only recommend in-kind projects that have developed maintenance plans that satisfy relevant City agencies.

Value

The project sponsor is required to provide two cost estimates for the proposed improvement. The project sponsor is encouraged to include known hard and soft costs, including City permits for the improvement (DPW or MTA). Project sponsors may not be credited with an in-kind fee waiver for any improvements which are required as part of project entitlements or any city codes. This includes but is not limited to the requirements listed in Appendix C. Project sponsors cannot get credit for funding maintenance plans, as impact fee revenue is limited to capital expenditures. The Planning Department will work with the Department of Public Works and the Department of Real Estate as appropriate to evaluate these cost estimates and determine final value.

The value of a proposed improvement determines the total amount of a fee waiver. The Department is not required to base the final valuation of the project on cost estimates provided by the project sponsor, but must provide an explanation for the final value. In recommending a project, the Department should consider value provided by private delivery of the project as compared to the costs for the City to deliver the good as an outer limit.

In most cases a project sponsor will receive in-kind fee waiver credit for 100% of the improvement cost. In cases where the costs exceed the amount of fees due or expenditures available for the infrastructure type, the project sponsor must identify additional funding sources, or gift the balance to the City.

Once the improvement is completed the Planning Department, or other City Agencies may review actual costs.

Neighborhood Support for the Project

Project sponsors are encouraged to coordinate with neighbors and the local community in the design and development process of the proposed improvements. A project that is well

coordinated with neighbors and supported should receive Planning Department recommendation.

Terms of Agreement

In negotiation with the Department, the project sponsor is required to develop terms of agreement to govern provision of the improvement. At a minimum, each in-kind agreement should include the following components:

- *Timing of Project Completion* – In most cases the improvement should be completed before the issuance of the first certificate of occupancy.
- *Process for Validating Completion of Work* – In most cases the relevant City agency, DPW, Park/Rec, MTA will inspect the work and verify previous to the Planning Department validating completion.
- *Process for Validating Costs* – In most cases the project sponsor will be required to submit invoices for expenditures related to the improvement, the Department will reconcile these costs with the original fee waiver. Cost overruns are the responsibility of the developer, however if the project is completed for less money than the amount of fees waived, the balance must be contributed to the relevant infrastructure fund with no penalty.
- *Expiration Date* – In most cases the project sponsor will be required to complete the proposed in-kind improvement within in a certain time from approval of the in-kind agreement.
- *Failure to fulfill Agreement* – in most cases the project sponsor's failure to fulfill the agreement will cause them to owe all fees plus interest before issuance of the first Certificate of Occupancy.
- *Approvals of Improvement by relevant City Agencies before first Construction document* - Before new public infrastructure is built, City agencies must approve the final design. In-kind agreements shall include a term that requires all necessary City approvals for an in-kind agreement are achieved prior to first construction document.

In kind agreements for specific infrastructure types should also include the following terms:

- Open Space - Three years of maintenance funding, or equivalent.
- Childcare - Required affordability for a portion of the spaces consistent with requirements to receive other City childcare funding, 55 year term with free rent, competitive process to identify program operator.
- Streetscape - Maintenance plan.

Projects which are not recommended may still elect to pursue Planning Commission approval, they must still complete the review process as described below.

Step 4: Approval by the Planning Commission

Fee waivers and in-kind agreements require Planning Commission approval. As noted above, before the Planning Commission considers the request the following must be completed:

- The Commission requests staff to seek input from the relevant CAC and to present the proposed fee waiver and in-kind agreement to the CAC for their review and consideration. The Commission strongly prefers that the CAC pass a resolution or recommendation on the proposed improvement the Commission will consider for an in-kind agreement.
- The Commission directs staff to seek input from the relevant City agencies, including requesting that those agencies make a formal recommendation on the improvement to the Planning Department in regards to the overall feasibility and desirability of the proposed improvements.
- The Planning Department determines the value of the in-kind improvement.
- A final in-kind agreement is drafted, including all relevant terms.

If the improvement is well defined, supported, and will be completed within a defined period from entitlement, the project sponsor should seek project entitlement and approval of the in-kind agreement at the same hearing. This option is most efficient and preferred by the Planning Commission.

If the final design, cost, or terms of the in-kind agreement are not completed, the project sponsor may elect for two Commission hearings, one for the project entitlement and a second for the in-kind agreement. The project sponsor must declare their *intent to pursue an in-kind agreement* and submit a conceptual design of the improvement and initial feedback from the CAC and/or neighbors and local community before the entitlement hearing. At the entitlement hearing The Planning Commission may make a non-binding statement of intent to approve the in-kind agreement. The Commission's intent to approve is non-binding as additional considerations may arise as the proposal develops. Once the agreement is finalized, the Commission will take action at a separate hearing. The CAC will be given an opportunity to provide a second resolution for the second hearing. This option allows project sponsors to receive entitlements and initiate DBI review of projects while finalizing the design, costs, and terms of the in-kind agreement.

At the time of project approval, all project sponsors must declare whether they intend to fulfill their community improvement/public benefit obligations by paying the fee or pursuing an in-kind agreement. Should a project sponsor declare their intent to pay impact fees at entitlement, yet later decide to pursue an in-kind agreement, the project sponsor must still abide by the process outlined in this policy, including review by the relevant CAC, coordination with City agencies, demonstrated support by the local community and formal approval hearing at the Planning Commission.

If the in-kind provision of an improvement is approved by the Planning Commission, the project sponsor must have final design completed and approved by the appropriate city agencies before the first construction permit for the development project is issued by the Department of Building Inspection.

Partial Fee Waivers

Should a project sponsor proposes to waive a *portion* of their fee obligation based on an in-kind agreement, the balance of fees are due before the first construction permit for the development project is issued by the Department of Building Inspection. If the project sponsor chooses to participate in the fee deferral program, they must contribute the first 20% of impact fees owed before the first construction permit is issued, the in-kind waiver amount should be considered ‘collected’ at first certificate of occupancy.

For example if a project sponsor’s total fee amount is \$1 Million, and they are granted an in-kind agreement for \$300K, they must contribute \$700K in cash at or before the first construction permit is issued. Should they elect to defer a portion of their fees (as permitted by the Planning Code), they must contribute the first 20%, or \$200K before the first construction permit is issued.

Appendix A. Suggested language for Notice of Planning Department Requirements (NOPDR) and Conditions of Approval

Staff should include language with this intent in the NOPDR and Conditions of approval, however staff is encouraged to modify the language to make relevant for specific cases.

Notice of Planning Department Requirements NOPDR

Impact Fees. Your project is subject to Community Improvement Impact Fee pursuant to Section 326 of the Code because it is within the Market and Octavia Plan Area. You must pay an impact fee of \$10 per occupiable square-foot for the dwellings and \$4 per occupiable square-foot for the commercial spaces prior to the issuance by DBI of the construction or building permit for your project.

Pursuant to Section 326.3(e) of the Code, the Community Improvement Impact Fee can be reduced for specific community improvements provided by the sponsor with the approval of the Planning Commission. Before the Planning Commission approves an in-kind agreement the proposed improvement must have schematic designs, Planning Department approved value, CAC resolution (as appropriate) and completed in-kind agreement. Please contact staff for additional information about potential in-kind improvements and the related process. Please refer to the Planning Commission policy on In-Kind agreements.

Conditions of Approval – Declaration of Intent

The Project Sponsor has submitted a Declaration of Intent to satisfy the requirements of the (Area Plan Development Impact Fee) through a payment to the Fund.

or

The Project Sponsor has submitted a Declaration of Intent to satisfy the requirements of the (Area Plan Development Impact Fee) through the provision of in-lieu improvement that is being heard for approval at the same hearing as this development project.. The proposed in-kind improvement includes: (Describe proposed improvement). Please review attached schematic design and a final in-kind agreement

Or

The Project Sponsor has submitted a Declaration of Intent to satisfy the requirements of the (Area Plan Development Impact Fee) through the provision of in-lieu improvement that has been cursorily reviewed by the City and the CAC, Generally the project sponsor intends to: (describe proposed project here). The project sponsor, City, and CAC are still coordinating on the design, valuation and terms of agreement. The project sponsor will return to the Planning Commission

for a fee waiver and approval of an in-kind agreement when the schematic design and a in-kind agreement are finalized.

Appendix B. Drafts of criteria City Agencies and CAC's may use to determine whether an improvement is *recommended* for an in-kind agreement

IPIC Draft Evaluation Criteria

1. Coordination
 - a. Other public infrastructure improvements
 - b. Public agency work programs
 - c. New private development projects
2. Ability to operate and maintain asset
3. Ability to leverage funds
 - a. From state or regional resource
 - b. Match funding from local sources or agency budgets
 - c. New programming that could generate new revenue
4. Achieve key plan objective: transit oriented neighborhood
 - a. Mix of project type, scales, timelines
 - b. Supports new growth and development
5. Community Priority – CAC input

Market and Octavia CAC – Draft Evaluation Criteria

Consistent with Market/Octavia Plan Goals
Contributes to neighborhood diversity ("Housing People" goal)
Promotes pedestrian, bicycle safety and transit ("Transportation Choices" goal)
Strengthens Community ("Building Whole Neighborhoods" goal)
Demonstrated Need
Studies and/or empirical data support project
Benefits a broad range of users
Benefits youth
Needed to serve added neighborhood residents from growth
Alleviates strain on existing community infrastructure--parks, facilities, etc
Mitigates specific impacts from development
Promotes economic and social community stabilization
Enhances safety
Can be implemented in conjunction with other public improvement projects

Appendix C. Examples of Existing Requirements that the Planning Commission will generally not consider for credit as an in-kind improvement include, but are not limited to:

- Work the project sponsor must complete as part of project entitlements.
- Planning Code Requirements
 - Yard and setback requirements – 130
 - Legislated setbacks – 131
 - Front setbacks, Landscaping – Section 132
 - Usable open space – 135, 138
 - Pedestrian Streetscape improvements in C-3 – 138.1
 - Screening of building features, 141, 142
 - Required Street Trees – Section 143
 - Treatment of ground floor, 144
 - Artworks etc. in C-3, 149
 - Parking Lots, 156
 - Transportation Management Programs, 163
 - Employment brokerage services, 164
 - Any Special Use District
 - Planned Unit Developments, 304
 - Affordable housing requirements, 313- 315, 319
 - Soma stabilization fund, 318
- Mitigation Measures identified during the environmental review process that are required to mitigate the specific impacts of a development project, including:
 - Staff directs traffic for drop off and loading/parking attendant
 - Programs to manage queuing, including pricing requirements
 - Police officers directing traffic for events
 - Information about available transit options in marketing materials
 - Freebies/discount for taking transit
 - Signal installation/modification (traffic control device)
 - Curb restrictions (no parking/loading only)
 - Signage/Directional signage
 - Curb Extensions/Bulbs
 - Parking Removal
 - Inter-agency coordination (residential move-in/move-out)
 - TDM Program
 - Car share
- Standard conditions of approval
 - Variance
 - Parking with a percentage permeable surface
 - The Property Owner shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean condition. Such maintenance shall include, at a minimum, daily litter pickup and disposal, and washing or steam cleaning of the main entrance and abutting sidewalks at least once each week
 - A final pedestrian streetscape improvement plan, including landscaping and paving materials and patterns, shall be submitted for review by, and

shall be satisfactory to the Planning Director, in consultation with staff from the Department of Public Works, the Department of Parking and Traffic, and the Bureau of Urban Forestry. Other agencies shall be contacted as appropriate. The Project shall include street trees in conformance with Section 143. Relocation of some existing underground utilities may be necessary to accommodate the required street trees. The street trees planted pursuant to this condition shall be maintained in perpetuity by the Project Sponsor.

- Subdivision Code Requirements
 - Public facilities, 1335
 - Utilities, 1336
 - Beautification, 1337
 - Easements, 1339
 - Mission Bay Subdivision Code, Improvements, Division 2, Article 6
 - Hunterspoint Shipyard Subdivision Code, Improvements, Division 3, Article 6
 - Responsibility for maintenance of street trees – 805

- DPW requirements
 - Required Curb Replacement
 - Required Access to lots
 - Required drainage work
 - Required curb ramps at corners
 - Survey monuments, replacement as appropriate
 - Establishment of a sidewalk, including the legislative process, for any parcel fronting a street, regardless of whether accepted or unaccepted – as deemed appropriate by City agencies
 - In instances where project fronts unaccepted street property owners are responsible for curb to mid- line of the road.

- Proportionate Credit may be given for anything built through
 - Downtown park fund, 139
 - Institutional Master Plans, 304.5
 - Childcare in C-3, 314

Appendix D. Summary: Steps for In-kind Agreements

PS – Project Sponsor,
 DCP – Department of City Planning,
 CAC – Citizens Advisory Committee,
 IPIC – Interagency Plan Implementation Committee

		P S	D C P	C A C	I P I C
Initiate In-Kind Process	Project Sponsor applies for project entitlements.	X	X		
	Planning Department issues a Notice of Planning Department Requirements (NOPDR) to Project Sponsor, including information about pursuing in-kind agreements (See Appendix C). Project sponsor coordinates with the Planning Department and CACs (as relevant) to identify opportunities for in-kind improvements.	X	X		
	Project sponsor states intent to pursue an in-kind improvement to the Department and provides a brief description of the proposed improvement.	X	X		
	The Planning Department notifies CAC.		X	X	
1. In-Kind Improvement Eligibility Determined	Planning Department notifies the Project Sponsor whether proposed improvement is <i>eligible</i> . Proposed improvement is eligible if it meets all three requirements below: <ul style="list-style-type: none"> • Fulfills purpose of community improvements • Infrastructure type is identified in fee ordinance • Expenditure category for infrastructure type is not exhausted If project is eligible.....	X	X		
2. In-Kind Improvement Prioritization	Staff asks CAC to provide initial feedback on where the proposed in-kind improvement fits into the area's list of prioritized improvements and an overall reading on the improvement relative to the plans identified needs. The project sponsor should share their proposed outreach strategy for the in-kind improvement with the CAC.	X	X	X	
	Project Sponsor, CAC and staff work together to further define the project and to determine if the proposed improvement is a	X	X	X	X

		P S	D C P	C A C	I P I C
	<p>priority for the plan area. Criteria include:</p> <ul style="list-style-type: none"> Identified in the area's CAC and IPIC endorsed 5 year capital plan. Does not compete with an CAC and IPIC endorsed priority improvement. Identified as an Eastern Neighborhoods priority project. CAC supports proposed improvement. Efficiencies gained through coordination with development. 				
3. In-Kind Agreement Recommendation	<ul style="list-style-type: none"> Neighborhood support for the proposed improvement. The proposed improvement, including schematics (30% design) is formally reviewed by the relevant city agency (DPW, Park Rec, DCYFS, etc.). In-kind agreement terms are discussed. Maintenance plan developed for proposed improvement. 		X	X	X
	The proposed improvement, including schematics (30% design) is formally reviewed by the relevant city agency (DPW, Park Rec, DCYFS, etc.). In-kind agreement terms are discussed.	X	X		X
In-Kind Improvement Value	<ul style="list-style-type: none"> Project sponsor submits two cost estimates, after City agency(s) provide formal input on design and terms. Planning Department submits cost estimates to DPW, MTA, Parks or Department of Real estate for review as relevant. Schematic design, PS cost estimates and City agency comments are circulated to the CAC. 	X	X		
CAC Resolution Adopted	CAC passes a resolution on the project which may include detailed comments on design, value and terms of agreement.		X	X	
In-Kind Agreement Finalized	Planning Department finalizes value and terms of agreement.	X	X	X	X
5. Approval of In-Kind Agreement	<p>Hearing Materials:</p> <ul style="list-style-type: none"> Schematic Design – 30% complete Final Value In-kind agreement CAC resolution 				

		P S	D C P	C A C	I P I C
	<ul style="list-style-type: none"> City Agency input Department Recommendation 				
	1) Planning Commission holds a hearing and acts on the Development Project and In-kind Agreement at the same time (One hearing). OR	X	X	X	
	2) If project sponsor wishes to proceed with entitlements before in-kind proposal is ready for commission decision they can elect for decisions to be made at two separate hearings. <ul style="list-style-type: none"> At entitlement hearing, Project Sponsor must state they intend to pursue an in-kind agreement, and provide at a minimum: 1.a conceptual design of the proposed improvement and 2. initial feedback from the CAC and Planning Department. The Planning Commission may make a non-binding statement of intent to approve the in-kind agreement. At the in-kind agreement hearing, all steps of the in-kind process must be complete. 				
First Construction Document Issued	Final design of in-kind improvement is completed before first construction document (site or building permit) is issued.	X	X		
First Certificate of Occupancy Issued	Before first certificate of occupancy is issued, In-kind improvement must be completed in accordance with in-kind approvals by the Planning Commission	X	X		
Note on “partial” fee waivers	<ul style="list-style-type: none"> The first 20% of the project sponsor’s total fee obligation is always due in cash at first construction document, unless included in approved in-kind fee waiver (i.e. unless approved waiver waives more than 80% of total fee) If the identified costs of a proposed in-kind improvement exceed the total amount of fees due or expenditure available, the project sponsor may choose to: 1) work with the city to identify additional sources of funding; or 2) receive a fee waiver for the total amount of fees due and gift the remaining balance to the city. 				