



SAN FRANCISCO PLANNING DEPARTMENT

New Planning Code / Building Code Summary: Development Stimulus & Fee Reform

Case Number: Board File No. 09-1275 Development Impact and In-Lieu Fees
Board File No. 09-1251 Development Fee Collection Procedure

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The Way It Was:

Several development impact fees were typically collected at one of two points: either at Site Permit, or later at the Certificate of Occupancy. The collection burden was shared by a host of agencies, including the Planning Department. DBI was previously not involved in fee collection but was responsible for issuing both the site permit and certificate of occupancy permit. The reliance on multiple agencies for fee assessment and collection resulted in a sometimes complicated and often confusing process for project sponsors and staff.

The Way It is Now:

Beginning July 1, 2010 any project sponsor who would be assessed development impact fees but has not yet paid the impact fees would be eligible for the fee deferral program. (Application processing fees remain unchanged by the legislation and are not eligible for deferral.) All impact fee requirements have been moved into a new Article Four of the Planning Code. At "first construction permit" all fees will be required to be paid in full, unless applicant enrolls in Fee Deferral Program at that time. This program will allow deferral of 80% of all impact fees in area plans (EN, M&O, etc.) and will allow deferral of 85% of impact fees in projects outside of adopted area plans. Interest due accrues during the deferral period. If fees are deferred all fees must be paid prior to issuance of "first certificate of occupancy". DBI is responsible for collecting the fees. Planning is responsible for calculating fees at project submittal and for confirming or adjusting fees after project approval.

The two Ordinances established the following:

1. **BF 091275/BF 091275-2 Development Impact and In-Lieu Fees** created a new Article Four in the Planning Code to consolidate fee and in-lieu controls in one article; added 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; provided that physical improvements would be confirmed by the

regulating department prior to first certificate of occupancy; and where possible, created standard definitions, procedures, appeals, and reporting standards while deleting duplicative language.

The following fees are now moved into the new Article Four:

- Downtown Park Special Fund (Previously § 139/Now § 412);
- Van Ness and Market Downtown Residential Special Use District (SUD): A) Including Van Ness and Market Downtown Residential SUD Affordable Housing Fund and B) Van Ness and Market Downtown Residential SUD Infrastructure Fund (Previously § 249.33 /Now § 424);
- Housing Requirements for Large-Scale Development Projects, Jobs-Housing Linkage Program (Previously § 313-/Now § 413);
- Child-Care Requirements for Office / Hotel Developments (Previously § 314- /Now § 414);
- Affordable Housing Program (Previously § 315 /Now §415);
- Downtown Residential Community Improvements Fund and the SoMa Community Stabilization Fund (Previously § 318- /Now §418);
- Housing Requirements for Residential Projects in the UMU Zoning Districts of Eastern Neighborhoods & the Land Dedication Alternative in the Mission NCT District (Previously § 319 /Now § 419);
- Market and Octavia Community Improvements Fund (Previously § 326 /Now § 421);
- Eastern Neighborhoods Public Benefit Fund (Previously § 327 / Now § 423);
- Balboa Park Community Improvement Fund (Previously § 331 /Now § 422);
- Visitacion Valley Community Facilities & Infrastructure Fee (Previously § 318.10 /Now § 420);
- Transit Impact Development Fee (Previously Chapter 38 of the Administrative Code / Now Planning Code § 411);
- Alternative Means of Satisfying the Open Space Requirement in the South of Market Mixed Use Districts (Previously § 135.3(d) / Now § 425)
- Alternative Means of Satisfying the Open Space Requirement in the Eastern Neighborhoods Mixed Use Districts (Previously § 135.3(e) / Now § 426)
- Payment in Cases of Variance or Exception (Previously § 135(j) / Now § 427)
- Street Tree Requirement (Previously § 143 / Now § 428)
- Artworks, Recognition and Model Requirements in C-3 Districts (Previously § 149 / § 429)

2. **BF 091251/BF 091251-2 Development Fee Collection Procedure; Administrative Fee** has amended the Building Code to establish a procedure for the Department of Building Inspection (DBI) to collect all development impact fees. The Ordinance ensures that fees are paid prior to the issuance of the first construction permit or allows the project sponsor to defer payment until issuance of first certificate of occupancy in exchange for paying a fee deferral surcharge. These fee procedures are implemented by a new “Fee Collection Unit” within DBI that ensures fee payment prior to issuance periods; requires a Project Development Fee Report prior to issuance of building or site permits; and provides an appeal opportunity to the Board of Appeals.

In more detail, the new process is:

The first Ordinance [BF 091275, Planning Code Amendment] creates a fee deferral mechanism while streamlining and consolidating the Planning Code fee requirements in one

location, Article Four of the Planning Code. The second Ordinance [BF 091251, Building Code Amendment] expands DBI's role; placing DBI in the fee collection process with responsibility for fee notification, reporting, collection, and tracking through a standardized process. The assessed fee amounts are subject to appeal before the Board of Appeals. Together, the two Ordinances provide a uniform process that would help both project sponsors and the public understand the impact fees associated with each development. For the first time, the "gate-keeping" agency charged with issuing the permit is also responsible for fee collection. The new option to defer fee payment is coupled with a "fee deferral surcharge" intended to preserve the City's revenue stream. This surcharge is assessed at a "blended" rate of return that combines rates reflecting what the City would have earned had it invested the monies and the increase to the cost of construction anticipated for building the infrastructure¹.

The new fee assessment and collection process includes the following four steps:

1. **Application Submittal**—The first step is the submission of Site or Building Permit applications by the project sponsor. Within 30-days of application submittal, each fee assessing agency (for example Planning, MTA, the School District etc.) shall send an initial development impact requirement/fee estimate to the Fee Collection Unit in DBI. These development impact requirements/fees will be compiled in an easy to read list called a "Project Development Fee Report" that will be available to any member of the public upon request. The Project Development Fee Report will list the amount of each development impact requirement/fee, the legal authorization for the development impact requirement/fee, and contact information for the staff person responsible for determining the requirement.
2. **Site & Building Permit**—These initial permits enable demolition, grading, site preparation and appeal processes. No site or building permits will be issued unless and until the project sponsor has declared whether they intend to pay fees and/or provide in-kind benefits (where such options exist) and all relevant fee-assessing agencies have approved a final Project Development Fee Report. Up until issuance, the applicant could work with the Fee Collection Unit and any fee-assessing staff to resolve questions or disagreements regarding the contents of the Project Development Fee Report. If these could not be resolved, the applicant could seek formal redress through the appeals process, but only if the applicant made good faith efforts in writing prior to permit issuance. Once a building or site permit has been issued by DBI, a 15-day appeal period begins that would allow the project sponsor or any member of the public to appeal any of the development impact requirements or fees included in the Project Development Fee Report. A project sponsor could only file an appeal if they had made good faith efforts, in writing, to resolve the dispute with an assessing agency. Members of the public could appeal directly to the Board of Appeals without any prior efforts. If appealed to the Board of Appeals, the jurisdiction of the Board would be limited to ensuring the accuracy of the calculations for assessed fees and development impact requirements. The Board of Appeals would not be empowered to make policy decisions to supersede, rescind or increase the fee or development impact requirements that have been legislated by the Board of Supervisors due to economic hardship or other reasons. Instead the Board of Appeals

could only correct faulty calculations. Disputes over a reasonable relationship or “nexus” between the fee and specific projects would continue to be heard by the Board of Supervisors.

3. **First Construction Permit**— Any and all development impact fees will be due prior to issuance of the first construction permit unless the project sponsor elects to defer them to First Certificate of Occupancy by enrolling in the fee deferral program. The term “first construction permit¹” refers to any building permit (addendum) issued after the site permit that would authorize substantial construction on a project. Interest (called a Fee Deferral Surcharge) would begin to accrue on all of the deferred fees beginning of the day that a project sponsor enrolled in the Fee Deferral Program but in any event no later than issuance of the construction permit. The fee deferral surcharge rate would be “locked-in” at this point based upon the City’s current investment policies for 2-year assets² and would continue to accrue interest until the project sponsor pays the deferred fees, presumably when they are ready to pull the first Certificate of Occupancy.

4. **First Certificate of Occupancy**—This permit allows a property to be occupied (and sold or rented) for commercial or residential use. After July 1, 2010, the first Certificate of Occupancy will not be issued by DBI until any deferred fees or certificates of completeness for in-kind contributions have been secured by DBI’s Fee Collection Unit. Any changes to the project since publication of the Project Development Fee Report will be reviewed by Planning Staff. Planning will notify DBI’s Collection Unit about any changes in development impact fees amounts so that the fee sheet can be corrected by DBI to reflect any changes. If for any reason fees need to be changed, a revised site or building permit will be issued and a new Project Development Fee Report will also be made part of the public record. This, again, would be subject to the appeal process.

Links to adopted legislation:

Board File No.	Enacted No.	Legislation Title / Legislation Web Address
091251	0107-10	Development Fee Collection Procedure; Administrative Fee http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances10/o0107-10.pdf
091275	0108-10	Development Impact and In-Lieu Fees http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances10/o0108-10.pdf

¹ The term ‘first construction permit’ excludes permits authorizing general site preparation work, such as demolition, grading or shoring permits, but includes permits authorizing foundation work, for example. For projects seeking only a single building permit, the first construction permit is the building permit.

² This surcharge shall be calculated monthly by the Treasurer’s Office as a blended interest rate comprised of 50% of the Treasurer’s yield on a standard two year investment and 50% of 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 consistent with its obligations under Section 409(b) of the San Francisco Planning Code.