

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

November 3, 2009

File 091251

Ann Marie Aherne
Commission Secretary
Building Inspection Commission
1660 Mission Street
San Francisco, CA 94103-2414

Dear Ms. Aherne:

On October 27, 2009, Mayor Newsom introduced the following proposed legislation:

File No. 091251 Ordinance amending the San Francisco Building Code by adding Section 107A.13 to establish a procedure for the Department of Building Inspection (DBI) to collect development impact and in lieu fees, to provide that the fees are payable prior to issuance of the first building permit or other document authorizing construction of the project, 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 on the amount owed that would be deposited into the same fund that receives the development fees, to require that any in-kind public benefit benefits required in lieu of payment of development fees are implemented prior to issuance of the first certificate of occupancy for the project, to require DBI to generate a Project Development Fee Report prior to issuance of the building or site permit for the project listing all fees due with the opportunity for an appeal of technical errors to the Board of Appeals, to establish a Development Fee Collection Unit within DBI and a fee for administering the program; adopting findings, including environmental findings.

This proposed legislation is being transmitted pursuant to Charter Section D3.750-5 for public hearing before the Building Inspection Commission. It is respectfully requested the Commission consider this item as soon as possible. This ordinance pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Linda Laws".

By: Linda Laws, Committee Clerk
Land Use & Economic Development Commit

Attachment

cc: Vivian L. Day, Director, Department of Building Inspection
Lou Aurea, Department of Building Inspection

1 [Development Fee Collection Procedure; Administrative Fee.]

2

3 **Ordinance amending the San Francisco Building Code by adding Section 107A.13 to**

4 **establish a procedure for the Department of Building Inspection (DBI) to collect**

5 **development impact and in lieu fees, to provide that the fees are payable prior to**

6 **issuance of the first building permit or other document authorizing construction of the**

7 **project, with an option for the project sponsor to defer payment to prior to issuance of**

8 **the first certificate of occupancy upon agreeing to pay a deferral surcharge on the**

9 **amount owed that would be deposited into the same fund that receives the**

10 **development fees, to require that any in-kind public benefit benefits required in lieu of**

11 **payment of development fees are implemented prior to issuance of the first certificate**

12 **of occupancy for the project, to require DBI to generate a Project Development Fee**

13 **Report prior to issuance of the building or site permit for the project listing all fees due**

14 **with the opportunity for an appeal of technical errors to the Board of Appeals, to**

15 **establish a Development Fee Collection Unit within DBI and a fee for administering the**

16 **program; adopting findings, including environmental findings.**

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

18 deletions are ~~strike-through italics Times New Roman~~.

19 Board amendment additions are double-underlined;

Board amendment deletions are ~~strikethrough normal~~.

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

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

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

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

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

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

Mayor Newsom
BOARD OF SUPERVISORS

1 (b) In March, 2008, San Francisco published its Citywide Development Impact Fee
2 Study Consolidated Report. The purpose of the Study was to evaluate the overall state,
3 effectiveness, and consistency of the City's impact fee collection process and to identify
4 improvements. Among other things, the Study cited the City's decentralized process as a
5 problem. Centralizing the collection of development impact and in-lieu fees within the
6 Department of Building Inspection, providing for an auditing and dispute-resolution function
7 within DBI, generating a single record listing all the impact and in-lieu fees that the City
8 assesses on development projects, and providing Project Development Fee Reports to project
9 sponsors and the public listing fees owed for individual development projects will further the
10 City's goals of streamlining the process, ensuring that fees are accurately assessed and
11 collected in a timely manner, informing the public of the fees assessed and collected, and
12 implementing suggestions contained in the Consolidated Report.

13 (c) The City assesses a variety of development fees on land-use development
14 projects; the timing for collection of these fees varies. Also, typical economic cycles create
15 volatility in the building and construction industries that has negative impacts on the
16 availability of financing, greatly affecting the viability of a range of development projects. The
17 current global economic crisis has exceeded both the depth and breadth of typical economic
18 downturns. These boom-and-bust economic cycles create financial and other hardships for
19 both project sponsors and the City's permit-issuing departments.

20 By enacting this procedure to standardize the collection and timing of payment of
21 development impact and in-lieu fees assessed by the City and give the project sponsor the
22 option to defer payment of the fees, the City intends not only to streamline the process but
23 also to mitigate the financial hardships caused by economic cycles in general and the current
24 global economic crisis in particular. This will allow project sponsors to proceed to obtain
25

1 entitlements for development projects that would otherwise be unable to proceed under
2 adverse economic conditions and enable a better-managed economic recovery.

3 Section 2. The San Francisco Building Code is hereby amended by adding Section
4 107A.13, to read as follows:

5 107A.13 Development Impact and In-Lieu Fees.

6 107A.13.1 Definitions. (a) The following definitions shall govern interpretation of this Section:

7 (1) "City" shall mean the City and County of San Francisco.

8 (2) "Department" shall mean the Department of Building Inspection.

9 (3) "Development fee" shall mean either a development impact fee or an in-lieu fee. It shall not
10 include a fee for service or any time and material charges charged for reviewing or processing permit
11 applications.

12 (4) "Development impact fee" shall mean a fee imposed on a development project as a condition
13 of approval by the various departments and agencies of the City and levies against development
14 projects by the San Francisco Unified School District under Section 17620 of the California Education
15 Code and other provisions of State law, which may or may not be an impact fee governed by the
16 California Mitigation Fee Act (California Government Code Section 66000 et seq.)

17 (5) "Development impact requirement" shall mean a requirement to provide physical
18 improvements, facilities or below market rate housing units imposed on a development project as a
19 condition of approval to mitigate the impacts of increased demand for public facilities or housing
20 caused by the development project that may or may not be governed by the California Mitigation Fee
21 Act (California Government Code Section 66000 et seq.).

22 (5) "Development project" shall mean a project that is subject to a development impact or in-
23 lieu fee or development impact requirement.

1 (6) "First certificate of occupancy" shall mean either a temporary certificate of occupancy or a
2 Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section
3 109A, whichever is issued first.

4 (7) "First construction document" shall mean the first building permit issued for a development
5 project or, in the case of a site permit, the first building permit addendum issued or other document
6 that authorizes construction of the development project. Construction document shall not include
7 permits or addenda for demolition, grading, shoring, pile driving, or site preparation work.

8 (8) "In-lieu fee" is a fee paid by the project sponsor in lieu of complying with a City requirement
9 that is not a development impact fee within the meaning of the Mitigation Fee Act.

10 (9) "Project sponsor" or "sponsor" shall mean an applicant seeking approval for construction
11 of a development project subject to this Section, such applicant's successor and assigns, and/or any
12 entity which controls or is under common control with such applicant.

13 (10) "Unit" shall mean the Department's Development Fee Collection Unit.

14 107A.13.2 Collection by Department. The Department shall be responsible for collecting all
15 development impact and in-lieu fees, including (a) fees levied by the San Francisco Unified School
16 District if the District authorizes collection by the Department, and (b) fees levied by the San Francisco
17 Public Utilities Commission, if the Commission's General Manager authorizes collection by the
18 Department, deferral of payment of any development fee, and/or resolution of any development fee
19 dispute or appeal in accordance with this Section 107A.13.

20 107A.13.3 Timing of payment. All development impact or in-lieu fees owed for a development
21 project shall be paid by the project sponsor prior to issuance of the first construction document;
22 provided, however, that the project sponsor may elect to defer payment of said fees under Section
23 107A.13.3.1.

24 107A.13.3.1 Option to defer payment; deferral surcharge. A project sponsor may elect to defer
25 payment of any development impact or in-lieu fee collected by the Department to a due date prior to

1 issuance by the Department of the first certificate of occupancy. This option may be exercised by (1)
2 submitting a deferral request to the Department on a form provided by the Department prior to
3 issuance of the first construction document, and (2) agreeing to pay a Development Fee Deferral
4 Surcharge.

5 The Development Fee Deferral Surcharge shall be paid when the deferred fees are paid prior to
6 issuance of the first certificate of occupancy, and shall accrue at the Development Fee Deferral
7 Surcharge Rate. The Development Fee Deferral Surcharge Rate shall be calculated monthly by the
8 San Francisco Treasurer's Office as 60% of the Two Year U.S. FNMA Sovereign Agency Note Yield-to-
9 Maturity and 40% of the Current Two-Year U.S. Treasury Note Yield-to-Maturity as quoted from the
10 close of business on the last open market day of the month previous to the date when a project sponsor
11 elects to defer the development fees owed on a development project. The accrual of any deferred
12 development fees begins on the first day that a project sponsor elects to defer development fees, but
13 never later than immediately after issuance of the first construction document. The Development Fee
14 Collection Unit shall calculate the final Development Fee Deferral Surcharge by multiplying the total
15 development fees otherwise due prior to issuance of the construction document by the Development Fee
16 Deferral Surcharge Rate by the actual day count of the entire Development Fee Deferral Period, which
17 shall be the number of days between the project sponsor's election to defer to final payment of the
18 deferred development fees. The Development Fee Deferral Surcharge shall be apportioned among all
19 development fee funds according to the ratio of each development fee as a percentage of the total
20 development fees owed on the specific project.

21 107A.13.4 Development Fee Collection Unit. There shall be a Development Fee Collection
22 Unit established within the Department. The Unit's duties include: (1) receiving and organizing
23 information from various City agencies concerning the amount of development fees owed or specific
24 development impact requirements imposed under various sections of the San Francisco Municipal
25 Code or other legal authority, (2) working with relevant City agencies and the project sponsor to

1 resolve any disputes or questions concerning the development fees or development impact requirements
2 applied to specific development projects, (3) ensuring that the first construction document, or first
3 certificate of occupancy if the project sponsor elects to defer payment, is not issued prior to payment of
4 all development fees that are due and owing, (4) confirming with the Planning Department that any
5 outstanding development impact requirements are satisfied prior to issuance of the first certificate of
6 occupancy for projects subject to such requirements, (5) generating Project Development Fee Reports
7 upon request, (6) processing any development fee refunds, (7) publishing and updating the Citywide
8 Development Fee Register, and (8) performing such other duties as the Building Official requires. The
9 fee for the Department's services shall be as provided in Section 107A.13.14.

10 107A.13.5 Citywide Development Fee Register. The Unit shall publish a Citywide
11 Development Fee Register that lists all current San Francisco development impact and in-lieu fees. The
12 Unit shall update the Register whenever a development impact or in-lieu fee is newly enacted,
13 rescinded or amended. The Unit shall make the Register available to the public upon request, including
14 but not limited to posting it on the Department's website.

15 107A.13.6 Required City Agency or Department Notice to Development Fee Collection Unit.
16 Prior to issuance of any building or site permit for a project, any department or agency responsible for
17 calculating a development fee collected by the Unit or imposing a development impact requirement
18 shall send written or electronic notification to the Development Fee Collection Unit that (i) identifies
19 the development project, (ii) lists which specific development fees and/or development impact
20 requirements are applicable and the legal authorization for their application, (iii) specifies the amount
21 of the development fee or fees that the department or agency calculates is owed to the City or that the
22 project sponsor has elected to satisfy a development impact requirement through the direct provision of
23 public benefits, (iv) lists the name and contact information for the staff person at each agency or
24 department responsible for calculating the development fee or monitoring the development impact
25 requirement.

1 107A.13.7 Project Development Fee Report. Prior to the issuance of the building or site
2 permit for a development project that owes a development fee or fees or is subject to development
3 impact requirements, and at any time thereafter, the Development Fee Collection Unit shall prepare
4 and provide to the project sponsor, or any member of the public upon request, a Project Development
5 Fee Report. The Report shall: (i) identify the development project (ii) list which specific development
6 fees and/or development impact requirements are applicable and the legal authorization for their
7 application, (iii) specify the amount of the development fee or fees that the department or agency
8 calculates is owed to the City or that the project sponsor has elected to satisfy a development impact
9 requirement through the direct provision of physical improvements, (iv) list the name and contact
10 information for the staff person at each agency or department responsible for calculating the
11 development fee or monitoring the development impact requirement,

12 and (v) state whether the development fee or fees are due and payable prior to issuance of the
13 first construction document or whether the project sponsor has requested deferral under Section
14 107A.13.3.1, and note the status of payment. A copy of the Project Development Fee Report shall
15 always be made available to the project sponsor immediately prior to issuance of the site or building
16 permit for a development project subject to any development fee or fees to provide adequate notice of
17 the proposed development fee or fees.

18 107A.13.8 Failure to give notice of a development fee owed or development impact
19 requirement. The failure of the Unit or a fee-assessing department or agency to give any notice of a
20 development fee owed or development impact requirement shall not relieve the project sponsor of the
21 obligation to pay the development fee when it is due. The procedure set forth in this Section is not
22 intended to preclude enforcement of the development fee requirements pursuant to any other section of
23 this Code, the Planning Code or other parts of the Municipal Code or under the laws of the State of
24 California.

25 107A.13.9 Development fee dispute resolution; appeal to Board of Appeals.

1 107A.13.9.1 Procedure for resolution by Development Fee Collection Unit. If a dispute or
2 question arises concerning the accuracy of the final Project Development Fee Report, including the
3 mathematical calculation of any development fee listed thereon, the Development Fee Collection Unit
4 shall attempt to resolve it in consultation with the department or agency affected by the disputed fee
5 and the project sponsor. A person protesting the accuracy of the Report must submit the issue or issues
6 in writing to the Unit with a copy to the department or agency whose development fee is in dispute.
7 Any public notice of the issuance of the building or site permit shall notify the public of the right to
8 request a copy of the Project Development Fee Report and of the right of appeal to the Board of
9 Appeals under Section 107A.13.9.2.

10 107A.13.9.2 Appeal to Board of Appeals. (a) If the Development Fee Collection Unit is unable
11 to resolve the dispute or question, the project sponsor or a member of the public may appeal the
12 Project Development Fee Report to the Board of Appeals within 15 days of the issuance of the building
13 or site permit under Article 8 et seq. of the San Francisco Business & Tax Regulations Code.

14 (b) In cases where a project sponsor is not using the site permit process and is required to
15 pay a development fee or fees prior to issuance of the development project's building permit, and
16 chooses not to defer payment under Section 107A.13.3.1, the sponsor may pay a disputed fee under
17 protest and file an appeal within 15 days of the issuance of the permit.

18 (c) In order to appeal to the Board of Appeals under this Section, an appellant must first
19 have attempted to resolve the dispute or question by following the procedure in Section 107A.13.9.1.
20 Evidence of this prior attempt must be submitted to the Board of Appeals in order for the Board to
21 accept the appeal.

22 (d) Promptly after an appeal has been filed, the Board of Appeals shall notify the
23 department or agency whose development fee or development impact requirement is at issue of the fact
24 that an appeal has been filed and the date scheduled for hearing. A representative of the Department of
25

1 Building Inspection and of the department or agency whose development fee or development impact
2 requirement is in dispute must be present at the appeal hearing.

3 (e) In hearing any appeal of the Project Development Fee Report, the Board's jurisdiction
4 is strictly limited to determining whether the mathematical calculation of the development fee or the
5 scope of a development impact requirement is accurate and resolving any technical disputes over the
6 use, occupancy, floor area, unit count and mix, or other objective criteria that calculation of the
7 challenged development fee or development impact requirement is based upon.

8 (f) If a decision by the Board of Appeals requires a refund of all or any portion of the
9 disputed development fee, the refund shall be processed promptly by the Development Fee Collection
10 Unit under Section 107A.13.11. If a decision requires a new determination regarding the scope of a
11 development impact requirement, such new determination shall be made by the relevant City agency or
12 department prior to issuance of the first certificate of occupancy. Where the Board determines that an
13 additional amount of the fee or fees is due and owing, the additional amount shall be paid prior to
14 issuance of the first certificate of occupancy for the development project.

15 107A.13.10 Violation of this Section deemed a violation of the Building Code. In addition to
16 the lien proceedings authorized by Section 107A.13.14, a violation of this Section 107A.13 shall be
17 deemed a violation of the Building Code and subject to the provisions of Section 103A and any
18 investigation or other fees authorized under other sections of this Code to compensate the Department
19 for the cost of abating violations.

20 107A.13.11 Development fee refunds. Upon notification by the property owner or project
21 sponsor and confirmation by the applicable department or agency that a fee refund is due, the Unit
22 shall process the refund. The fee for processing the refund shall be as set forth in Table 1A-D – Other
23 Building Permit and Plan Review Fees.

24 107A.13.12 Development fee information a public record. Any notice of development fees due
25 or development impact requirements imposed sent to the Development Collection Unit by any fee-

1 assessing departments and agencies, the Project Development Fee Report issued by the Unit, and any
2 development fee refunds or development impact requirement revisions made are a matter of public
3 record.

4 107A.13.13 Administrative fee. The fee for services provided by the Department under this
5 Section 107A.13 shall be the Standard Hourly Rate for Administration set forth in Table 1A-D of this
6 Code. The administrative fee is payable within 30 days' of the Department's notice that payment is
7 due.

8 107A.13.14 Administrative procedures. The Building Official is empowered to adopt such
9 administrative procedures as he or she deems necessary to implement this Section. Such administrative
10 procedures shall be generally consistent with the procedural requirements set forth in this Section
11 107A.

12 107A.13.15 Wrongful Issuance of First Construction Document or Certificate of Occupancy;
13 assessment lien; notice. In addition to any other remedy established in this Code or under other
14 authority under the laws of the State of California, if DBI inadvertently or mistakenly issues the first
15 construction document or first certificate of occupancy, whichever applies, for a development project
16 that has not paid a development fee that is due and owing and payment has not been received within 30
17 days following notice that payment is due, or, in the case where a sponsor has elected to satisfy a
18 development impact requirement through direct provision of physical improvements and where non-
19 compliance with any such requirement is not corrected within 30 days following notice, the Department
20 shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco
21 Administrative Code to make the entire unpaid balance of the fee that is due, including interest at the
22 rate of one and one-half percent per month or fraction thereof on the amount of unpaid fee, a lien
23 against all parcels used for the development project. The penalty fee provisions of this section shall
24 also apply to projects that have elected to provide physical improvements in lieu of paying a
25 development fee, as if they had elected to pay the relevant development fee.

1 The Department shall send all notices required by Article XX to the owner or owners of the
2 property and to the project sponsor if different from the owner. The Department shall also prepare a
3 preliminary report, and notify the owner and sponsor of a hearing by the Board of Supervisors to
4 confirm such report at least ten days before the date of the hearing. The report shall contain the owner
5 and sponsor's names, a description of the development project, a description of the parcels of real
6 property to be encumbered as set forth in the Assessor's Map Books for the current year, a description
7 of the alleged violation of this Section, and shall fix a time, date, and place for hearing. The
8 Department shall mail this report to the sponsor and each owner of record of the parcels of real
9 property subject to the lien. Any notice required to be given to an owner or sponsor shall be
10 sufficiently given or served upon the owner or sponsor for all purposes in this Section if personally
11 served upon the owner or sponsor or if deposited, postage prepaid, in post office letterbox addressed to
12 the owner or sponsor at the official address of the owner or sponsor maintained by the Tax Collector
13 for the mailing of tax bills or, if no such address is available, to the sponsor at the address of the
14 development project, and to the applicant for the site or building permit at the address on the permit
15 application.

16 Except for the release of the lien recording fee authorized by Administrative Code Section
17 10.237, all sums collected by the Tax Collector under this Section shall be held in trust by the
18 Treasurer and deposited in the City's appropriate fee account.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:


23 JUDITH A. BOYAJIAN
24 Deputy City Attorney
25

Mayor Newsom
BOARD OF SUPERVISORS